

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF OHIO
4 WESTERN DIVISION
5
6

7 WALTER W. THIEMANN, :
8 On Behalf of Himself :
9 And of All Others :
10 Similarly Situated, :

11 Plaintiff, :

12 VS. : CASE NO. C-1-00-793

13 OHSL FINANCIAL :
14 CORPORATION, et al., :

15 Defendants. :
16
17

18 Deposition of ~~BIMOTHY~~ B. MATTHEWS, ESQ.,
19 a witness herein, called by the plaintiff for
20 cross-examination pursuant to the Federal Rules
21 of Civil Procedure, taken before me, Lee Ann
22 Williams, a Registered Professional Reporter
23 and Notary Public in and for the State of Ohio,
24 at the offices of Gene Mesh & Associates, 2605
25 Burnet Avenue, Cincinnati, Ohio 45219, on
Thursday, August 21, 2003, at 10:03 a.m.

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1 APPEARANCES:

2 On behalf of the Plaintiff:

3 Oene I. Mesh, Esq.

4 and

5 Michael G. Brautigam, Esq.

6 Oene Mesh & Associates

7 2605 Burnet Avenue

8 Cincinnati, Ohio 45219

9 On behalf of the Defendant:

10 James R. Burks, Esq.

11 Keating, Muething & Klekamp

12 1400 Provident Tower

13 One East Fourth Street

14 Cincinnati, Ohio 45202

15 On behalf of the Defendant:

16 Michael Maundrell, Esq.

17 Schroeder, Maundrell, Barbare

18 & Powers

19 110 Governor's Knoll

20 11935 Mason Road

21 Cincinnati, Ohio 45249

22 On behalf of the Witness:

23 Louis F. Olligen, Esq.

24 Keating, Muething & Klekamp

25 1400 Provident Tower

One East Fourth Street

Cincinnati, Ohio 45202

...

1 TIMOTHY B. MATTHEWS, ESQ.

2 having been first duly sworn, testified as

3 follows:

4 CROSS-EXAMINATION

5 BY MR. BRAUTIGAM:

6 Q. Good morning, Mr. Matthews. My
7 name is Michael G. Brautigam and I represent
8 Walter Thiemann and a class of OHSL
9 shareholders. Mr. Matthews, let me place
10 before you what has been marked as Plaintiff's
11 Exhibit 47. And I ask you to take a look at
12 it.

13 A. Okay.

14 Q. Have you seen it before?

15 A. Yes, I have.

16 Q. Are you familiar with it?

17 A. Yes, I am.

18 Q. Do you recognize it?

19 A. Yes.

20 Q. What is Plaintiff's Exhibit 47?

21 A. It's from the web page of Keating,
22 Muething & Klekamp and it's basically my
23 biography.

24 Q. Okay. And is this current?

25 A. Yes, it is.

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1 INDEX

2 Examination of TIMOTHY MATTHEWS, ESQ. Page
3 By Mr. Brautigam: 45 Defendant's Exhibit Page Identified
6 No. 47 41 Q. Are you chairman of the commercial
2 finance practice area of KMK?

3 A. Yes, I am.

4 Q. And what are your duties and
5 responsibilities as chairman of the commercial
6 finance area at KMK?7 A. To lead the professionals in our
8 group in the designated practice area.9 Q. And what are the areas of
10 responsibility in that practice area?11 A. Well, commercial finance would
12 encompass any type of financing transaction
13 including commercial loans, mezzanine loans,
14 project financing, equipment leasing,
15 structured finance, asset based loans, and
16 other types of financing transactions.17 Q. Okay. Let's talk a little bit
18 about your educational background. I
19 understand you graduated from Harvard in 1978?

20 A. Correct.

21 Q. And what was your degree in?

22 A. Economics.

23 Q. And you remained at Harvard for a
24 law degree?

25 A. Correct.

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1 Q. And you graduated in 1981; is that
2 correct?

3 A. Correct.

4 Q. And then you spent six years at
5 Brown & Gardner; is that right?

6 A. Yes.

7 Q. And where is that firm located?

8 A. That firm no longer exists. That
9 firm was merged into Keating, Muething &
10 Klekamp in 1987.

11 Q. I see. And you were merged in as
12 a partner at that time?

13 A. That's correct.

14 Q. What is business planning and
15 formation? How would you describe that general
16 area?

17 A. Well, business planning can
18 encompass a lot of different things, but in the
19 context that you see it here, it would mean
20 planning for the capital structure of a
21 business, assisting small business owners or
22 middle market business owners with decisions
23 about how to finance their business, how to
24 grow their business, how to expand it, things
25 of that nature.

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1 Q. I understand you're an expert in
2 taxation; is that correct?

3 A. Well, that's one of my practice
4 areas, yes.

5 Q. Okay. Are you also an expert in
6 mergers and acquisitions?

7 A. Yes.

8 Q. Are you an expert in commercial
9 loan documentation?

10 A. Yes.

11 Q. Estate planning? ~~is~~

12 A. No. I would -- I would not say
13 that at this point in time. I do have
14 substantial expertise in that area, but more
15 recently I've not kept up in that area.

16 Q. Okay. Are you an expert in
17 personal tax services?

18 A. Again, I would not say I'm an
19 expert in personal tax services at this time.
20 In the past I've done substantial amounts in
21 that area, but I would not consider that to be
22 a, a current practice area in which I would
23 hold myself out as an expert.

24 Q. Okay. Are you an expert in
25 private offerings?

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1 A. No.

2 Q. Finance and leveraged leasing?

3 A. I would say that in finance, yes.
4 In the context of leveraged leasing, you know,
5 I would not -- I would not hold myself out as
6 an expert in that area.

7 Q. Okay. Well --

8 A. Well, what you mean by an expert
9 perhaps would merit some clarification, but
10 when I think of, you know, a certain degree of
11 specialization, I would not be specialized in
12 equipment financing.

13 Q. Okay. It says, according to your
14 firm biography, that you specialize -- you have
15 an emphasis on bank transactions; is that
16 correct?

17 A. Yes.

18 Q. And what bank transactions have
19 you been involved in?

20 A. Really all -- all kinds of bank
21 transactions. I've been involved in Federal
22 Reserve Board applications. I've been involved
23 in mergers and acquisitions. I've been
24 involved in divestiture transactions. I've
25 been involved in transactions that, as you

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1 would expect, commercial lending type of
2 transactions, commercial loans, asset based
3 loans, participation arrangements with bank
4 groups and a number of other types of bank
5 transactions.

6 Q. Approximately how many mergers and
7 acquisitions have you been involved in?

8 A. Over what period of time?

9 Q. In your career.

10 A. I would say approximately 150.

11 Q. And how many of those involved
12 banks or other financial institutions?

13 A. I would say directly or indirectly
14 almost all of them, because even ones that did
15 not directly involve financial institutions
16 usually would indirectly involve financial
17 institutions because you have to finance the
18 purchase or the sale of a business.

19 Q. Okay.

20 A. So most of them, certainly.

21 Q. Okay. I understand you serve as a
22 director of a number of public companies; is
23 that correct?

24 A. No.

25 Q. Have you ever --

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1 A. I serve as the director for some
2 private companies.

3 Q. Okay. Have you ever served as a
4 director for a public company?

5 A. No.

6 Q. What's the difference between
7 serving as a director of a public company as
8 opposed to a private company?

9 MR. BURKE: Objection to form.
10 You may answer.

11 A. Well, as a director, you know,
12 your allegiance is always in both cases to
13 your -- to your shareholders, you know. You
14 have fiduciary duties to your shareholders.
15 But with public companies, that takes a
16 different form because often there are many
17 shareholders, whereas in private companies
18 there may be one or two shareholders, or ten
19 shareholders. So the group to whom you owe
20 obligations are smaller. That changes the way
21 do you certain things.

22 For example, if in a small company
23 context I want to ensure that my constituents,
24 which are my shareholders, are okay with a
25 transaction, for example, I can simply go to

1 corporate attorney working on a transaction is
2 to assist the directors in meeting their
3 fiduciary duties. Is that fair?

4 A. I don't know.

5 MR. GILLIGAN: Excuse me. I
6 object to your restating. You know, you ask a
7 question, he gives an answer. I don't want you
8 restating his testimony. If you don't
9 understand it, ask him a question about what
10 you don't understand.

11 MR. BRAUTIGAM: Lou, we're doing
12 fine. We don't need speaking objections.

13 MR. GILLIGAN: I'm sorry? Excuse
14 me?

15 MR. BRAUTIGAM: I said we're doing
16 fine, we don't need speaking objections.

17 MR. GILLIGAN: Well, I want you to
18 understand what the reason for my objection is,
19 so that you won't repeat an improper
20 examination.

21 MR. BRAUTIGAM: Lou --

22 MR. GILLIGAN: Go ahead.

23 MR. BRAUTIGAM: -- if you have an
24 objection, say the word objection and nothing
25 else.

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1 them. And I may be able to talk every single
2 one of them about it to satisfy myself that the
3 transaction may move forward, whereas that's
4 not feasible in a public setting. I'm not
5 sure -- I mean, there may be other differences,
6 but that's certainly one that comes to mind.

7 Q. When you're working as an attorney
8 on a merger and acquisition, is it part of your
9 job to ensure that the directors meet their
10 fiduciary responsibilities?

11 A. No.

12 Q. Why not?

13 A. Well, when you -- when you use
14 "ensure," I think -- that implies a lot to me.
15 I think that the role of a corporate attorney
16 representing a company, you know, certainly can
17 include advice to the Board regarding their
18 fiduciary duties.

19 And that would be -- that would be
20 normal, but when you -- your question was are
21 we obligated to ensure that the Board satisfies
22 their fiduciary duties. I don't think that is
23 our obligation.

24 Q. So I think a fair restatement of
25 your answer would be that your job as a

1 MR. GILLIGAN: Don't instruct me
2 on what to do.

3 MR. BRAUTIGAM: Can we have the
4 question read back, please?

5 (Record read by Reporter.)

6 A. No.

7 MR. GILLIGAN: Note my objection.

8 A. Should I answer the question?

9 Q. Yes.

10 MR. GILLIGAN: You don't have to
11 repeat the same answer you already gave. If
12 you want to just rely on the answer you
13 previously gave, just rely on that, if you
14 wish.

15 A. I'll rely on the answer.

16 BY MR. BRAUTIGAM:

17 Q. Okay. What other roles do you
18 have as a corporate attorney in working on a
19 merger transaction?

20 MR. BURKE: Objection to form.
21 Calls for a narrative.

22 A. Well, again, the role that you
23 have in a given transaction depends on a lot of
24 different things, you know, depending on the
25 type of company you represent, whether they

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1 have in-house resources to assist in the
2 process or not, you know, what you're asked to
3 do, what you're not asked to do.

4 That's a -- that's a pretty
5 difficult question to answer, because it will
6 depend on the transaction. I don't think there
7 is a set role, but the role is to represent the
8 company. When you are counsel to a company,
9 you represent the company. You do not
10 represent the individual Board members, if
11 that's the import of your question.

12 Q. Okay. What do you do as a
13 director on the Board of Worldwide Equipment
14 Enterprises?

15 A. What do I do?

16 Q. Right.

17 A. Well, I meet when Board meetings
18 are called, which are twice a year. We discuss
19 issues of strategic importance to the company
20 and we make decisions on matters that come
21 before the Board.

22 Q. What kind of a company is that?

23 A. It's about a \$300 million a year
24 revenue company, based in Prestonsburg,
25 Kentucky, which is involved in the class six,

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1 people that do that. But in Lucrum's case I'm
2 integrally involved in the business planning
3 process for them.

4 Q. Okay. And with respect to DBA
5 Direct, what are your duties and
6 responsibilities as a director?

7 A. Well, it's kind of similar to
8 Lucrum. It's also a small company, privately
9 held, about a \$5 million a year company. And
10 I'm on the Board there, but also have more of a
11 business planning role with them as well.

12 Q. Do you serve on any committees of
13 any of these Boards of the privately held
14 companies?

15 A. Not at the current time, but I
16 have in the past.

17 Q. Okay. What Boards have you served
18 -- excuse me, what committees have you served
19 on?

20 A. Compensation committees and audit
21 committees.

22 Q. Okay. What are the duties and
23 responsibilities of the audit committee of a
24 non-public company?

25 A. Well, in the case of an audit

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1 seven and eight truck dealership market and has
2 about 35 locations throughout the eastern
3 United States.

4 Q. Okay. What is Lucrum,
5 Incorporated?

6 A. Lucrum -- Lucrum, Incorporated is
7 a privately held IT consulting firm based in
8 Cincinnati. It's about a \$12 million a year
9 company which does computer programming, staff
10 augmentation, IT consulting and similar types
11 of services.

12 Q. And are your duties and
13 responsibilities as a Board member for that
14 company essentially the same?

15 A. No.

16 Q. Okay. What do you do as a
17 director for that company?

18 A. Well, in that case part of what I
19 assist the company in doing in my role as a
20 director is to assist them with -- and this
21 really isn't, I guess, a role that is inherent
22 in being a director -- you don't have to do
23 this as a director, but I assist them with
24 their business planning, whereas with Worldwide
25 I don't really do that, they have in-house

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1 committee, again the duties and
2 responsibilities can vary from company to
3 company. Where I've served as an audit
4 committee member or chairman, the
5 responsibility has been to review the financial
6 statements, to discuss the audit report with
7 the independent auditors, to determine, you
8 know, what, if any, changes to management's
9 accounting procedures -- or the company's
10 accounting procedures should be made as a
11 result of the auditor's review of the financial
12 statements, and then to report back to the
13 Board of Directors. But that's not necessarily
14 the only role.

15 Q. Okay. Have you served as an audit
16 committee chairman?

17 A. Yes.

18 Q. For what company?

19 A. In the case of -- actually for a
20 nonprofit Northern Kentucky University
21 Foundation, I am currently serving as the audit
22 committee chairman.

23 Q. And as the audit committee
24 chairman and also in your work as an attorney,
25 you have to be familiar with the concept of

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1 materiality. Is that correct?
 2 MR. BURKE: Objection, ambiguous.
 3 You may answer.
 4 A. No.
 5 Q. Okay. Are you familiar with the
 6 concept of materiality?
 7 A. Yes.
 8 Q. What is your understanding of
 9 materiality?
 10 A. Well, materiality is a term that
 11 can take on a lot of different meanings
 12 depending on the context. It's like many words
 13 of general application, it can assume a lot of
 14 different meanings.
 15 It's -- if you were to be asked
 16 what's the definition of pornography, for
 17 example, you know, there's a well known Supreme
 18 Court Justice who said I don't know how to
 19 define it, but I know it when I see it.
 20 Materiality is something that
 21 requires the exercise of judgment in the
 22 context of circumstances. And I think you
 23 could probably write a book on it.
 24 Q. When you're working on a
 25 transaction, is it necessary to have a working

Page 20

1 A. Yes, it is.
 2 Q. Are you familiar with the term
 3 conflict of interest?
 4 A. Yes.
 5 Q. What do you understand --
 6 MR. GILLIGAN: Is there a context
 7 that you're referring to a conflict of
 8 interest?
 9 MR. BRAUTIGAM: We're doing fine,
 10 Lou. We're --
 11 MR. GILLIGAN: You won't answer my
 12 question?
 13 MR. BRAUTIGAM: Well --
 14 MR. GILLIGAN: Well, then I'll
 15 instruct you not to answer, unless you give a
 16 context for conflict of interest. Why sit and
 17 ask that broad of a question? All I'm asking
 18 you is if you can put it in context so we don't
 19 sit here and waste a lot of time.
 20 MR. BRAUTIGAM: Lou, we're doing
 21 fine.
 22 MR. GILLIGAN: Why are you so
 23 adverse to working through the deposition?
 24 MR. BRAUTIGAM: Lou --
 25 MR. GILLIGAN: I've never had this

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1 definition that's less than book length?
 2 A. Well, in the context of a given
 3 transaction, you may have several definitions
 4 of materiality. For example, there may be a
 5 set dollar amount that is defined by the
 6 parties as material in the context of a given
 7 issue. For example, any litigation in excess
 8 of a hundred thousand dollars could be defined
 9 as material litigation in that context.
 10 In another transaction you could
 11 have a definition of any litigation in excess
 12 of \$1 million. And both definitions would be
 13 equally apropos, depending upon the context or
 14 circumstances in which the definition is being
 15 used.
 16 We find this all the time in
 17 connection with audit reports and audit letter
 18 requests that are submitted to us as attorneys
 19 from accounting firms, because they'll often
 20 define materiality in different ways, depending
 21 upon the company's size and markets and
 22 circumstances and -- and other circumstances.
 23 Q. When you talked about a set dollar
 24 amount for materiality, is that sometimes known
 25 as a materiality threshold?

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1 trouble with any other lawyer I've dealt with.
 2 I do depositions all the time. I've never had
 3 that trouble with Mr. Mesh.
 4 MR. BRAUTIGAM: Lou, we're doing
 5 fine. The witness understands the question.
 6 Let him answer it, please. We don't need
 7 speaking objections.
 8 THE WITNESS: Can you repeat the
 9 question, please?
 10 (Record read by Reporter)
 11 BY MR. BRAUTIGAM:
 12 Q. What do you understand the term
 13 conflict of interest to mean?
 14 MR. BURKE: Objection, vague.
 15 A. Well, like your question about
 16 materiality, it can mean a lot of different
 17 things, Mike. There can be all different kinds
 18 of conflicts between people and the various
 19 interests that they have. We talked in terms
 20 of, for example, business conflicts of
 21 interest.
 22 There are legal conflicts of
 23 interest. There's conflicts of interest that
 24 might rise to the level of a disciplinary
 25 violation, you know, under the Canon of Ethics,

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1 our code of professional responsibility. But
 2 that's -- those aren't the only kinds of
 3 conflicts that one has to face or deal with.
 4 I'm not sure again what context you're
 5 referring to, so it's difficult to answer a
 6 question of that breadth.
 7 Q. Okay. I see Mr. Gilligan is
 8 sitting on your left. Do you know who he
 9 represents?
 10 A. Yes.
 11 Q. Who does he represent?
 12 A. Me.
 13 Q. How did that representation come
 14 about?
 15 A. I asked him to represent me in --
 16 to sit with me during this deposition.
 17 Q. Does he also represent KMK?
 18 A. In what context?
 19 Q. In the context of this litigation.
 20 MR. BURKE: Objection. KMK has no
 21 role in this litigation.
 22 A. Yes. I, I -- I understood, and
 23 you can correct me if I'm wrong, that this
 24 litigation involves the Provident Bank as a
 25 defendant. Is that correct?

Page 23

1 Q. The Provident Bank is one of many
 2 defendants.
 3 A. Okay. And KMK has served as
 4 Provident's counsel for many years, and I
 5 assume that it's serving as counsel in this
 6 case for the Provident Bank.
 7 Q. And who is serving as Provident
 8 Bank's counsel in this case?
 9 MR. BURKE: Objection to
 10 relevance.
 11 A. Keating, Muething & Klekamp.
 12 Q. Okay. And what attorneys
 13 specifically are representing Provident Bank in
 14 this litigation?
 15 A. Because I'm not familiar with the
 16 litigation and I've not been involved in the
 17 litigation, I probably couldn't tell you a
 18 complete list. I know Jim has been. I think
 19 Rachael Rowe has been, and there may be others.
 20 I don't know.
 21 Q. Has Mr. Gilligan ever filed papers
 22 on behalf -- well, in this litigation?
 23 MR. BURKE: Objection.
 24 A. I do not know. You have to
 25 understand, I have not read any of the

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1 pleadings in this case.
 2 Q. Okay. We're going to get there.
 3 A. Okay.
 4 Q. Has -- do Mr. Gilligan and Mr.
 5 Burke represent the same clients?
 6 MR. BURKE: Objection, vague.
 7 A. Not in my mind.
 8 Q. Why not?
 9 A. Well, because I've asked Lou to
 10 specifically represent me as a witness in this
 11 deposition. Jim represents the bank in
 12 connection with the lawsuit. That's -- that's
 13 how I -- that's how I see it.
 14 Q. What do you know about the OHSL
 15 litigation?
 16 A. Very little.
 17 Q. Okay. Can you tell me what you do
 18 know?
 19 A. I know that there was a lawsuit
 20 filed against the Provident Bank. I understand
 21 that there was a second suit filed against
 22 Keating, Muething & Klekamp, but I have not
 23 read any of the pleadings in connection with
 24 either of those cases.
 25 Q. Why not?

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1 MR. BURKE: Objection.
 2 A. There's no reason to.
 3 Q. What was your reaction when you
 4 learned that there was a lawsuit filed against
 5 KMK?
 6 MR. GILLIGAN: Is this relevant to
 7 this deposition?
 8 MR. BURKE: You are taking this
 9 deposition in which case, the Thiernann case?
 10 No, no, he's not -- are you taking this
 11 deposition in the Thiernann case or the Meier
 12 case? Because you're not authorized to
 13 practice with respect to the Meier case,
 14 correct?
 15 Q. There's a question pending, sir.
 16 A. Can you repeat the question,
 17 please?
 18 MR. GILLIGAN: I'll instruct you
 19 not to answer since counsel won't tell the
 20 capacity in which he's, he's asking the
 21 questions, so I instruct you not to answer,
 22 Tim.
 23 MR. BRAUTIGAM: There's no
 24 question as to who I'm representing. I stated
 25 at the beginning and I can --

7 (Pages 22 to 25)

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1 MR. GILLIGAN: Hey, if you're that
2 uncooperative, I'm going to instruct him not to
3 answer. Take it to the Court if you want. I'm
4 very confident the Court will see through your
5 charade.

6 MR. BRAUTIGAM: Can I have the
7 last question read back, please?

8 (Record read by Reporter.)

9 BY MR. BRAUTIGAM:

10 Q. Mr. Matthews, are you going to
11 answer that question?

12 A. No.

13 Q. Okay. Mr. Matthews, how did you
14 learn that there was a lawsuit pending against
15 KMK?

16 MR. GILLIGAN: Does that have
17 relevance to this case? Can you represent to
18 me it does?

19 MR. BRAUTIGAM: Yes.

20 MR. GILLIGAN: All right, then
21 I'll let you go forward, but let's show some
22 connection.

23 A. I think that someone in the office
24 told me probably a year ago or, or so, whenever
25 it was. I have no idea. I mean, I just -- I

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1 Q. And by "pending litigation," I
2 mean the Thiemann case, not only the suit
3 against KMK.

4 MR. GILLIGAN: You're asking about
5 both cases?

6 MR. BRAUTIGAM: KMK was sued in
7 this case as well.

8 MR. BURKE: That's not true, Mike.
9 That's a misrepresentation. That's a
10 misrepresentation. In fact, your motion for
11 leave to amend was denied, so that's a false
12 statement.

13 MR. BRAUTIGAM: That's not a false
14 statement, Jim.

15 MR. BURKE: That is a false
16 statement.

17 MR. BRAUTIGAM: KMK was sued at
18 various times in this litigation.

19 MR. GILLIGAN: What do you mean by
20 "this litigation," and I'll let him answer.

21 MR. BURKE: Which litigation?

22 MR. BRAUTIGAM: The Thiemann
23 litigation.

24 MR. BURKE: That's false. That
25 motion to leave for amend was denied and that's

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1 just heard about it, you know. We have a big
2 office and someone just, you know, told me KMK
3 was a defendant in the case involving OHSL and
4 Provident.

5 Q. Did that concern you?

6 A. Not really.

7 Q. Did you want to know more facts
8 about why KMK had been sued?

9 A. No.

10 Q. Why not?

11 MR. BURKE: ~~Objection~~ to
12 relevance.

13 A. Because it wasn't necessary for me
14 to know that. We have competent people
15 handling these kinds of things and it just
16 didn't concern me.

17 Q. Who is handling the litigation
18 against KMK?

19 A. I don't know.

20 Q. Did you ever talk to Gary Kreider
21 about the pending litigation?

22 A. No.

23 Q. Did you ever talk to David
24 Rosenberg about the pending litigation?

25 A. No.

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1 the current state of the record, correct, Mr.
2 Brautigam? Correct, Mr. Brautigam?

3 MR. BRAUTIGAM: Jim, I'm not
4 answering your questions. KMK was sued in this
5 litigation.

6 MR. BURKE: Objection. Misstates
7 the record.

8 MR. BRAUTIGAM: Whether the
9 Amended Complaint or Second Amended Complaint
10 will be accepted or not is still an open
11 question.

12 MR. GILLIGAN: Okay. Well, the
13 question is whether or not Mr. Matthews talked
14 to these gentlemen about this litigation?

15 MR. BRAUTIGAM: Correct.

16 MR. GILLIGAN: Being the Thiemann
17 litigation, period?

18 A. The answer is still no.

19 BY MR. BRAUTIGAM:

20 Q. Okay. Did you ever talk to Mark
21 Reuter about this litigation?

22 A. No.

23 Q. Did you ever talk to John Winstead
24 about this litigation?

25 A. No.

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1 Q. Do you consider this deposition to
2 be important?

3 A. Sure.

4 Q. What, if anything, did you do to
5 prepare for this deposition?

6 A. I discussed this matter with, with
7 Lou.

8 Q. Did you participate in a meeting
9 where several KMK attorneys, including Mr.
10 Burke, Ms. Rowe, Mr. Reuter, Mr. Winstead and
11 Mr. Weiss were present?

12 A. I did for about five or ten
13 minutes. I was late for that meeting and so I
14 kind of came in on the tail end of it.

15 Q. What was the purpose of that
16 meeting?

17 A. In my mind it was to discuss the
18 schedule.

19 MR. GILLIGAN: Note my objection
20 to it. And I understand that in one of the
21 other depositions apparently Mr. Fischer, who
22 was representing the lawyers from the firm, who
23 wasn't able to be here today and that's why I'm
24 taking over, allowed him -- allowed the witness
25 to testify about that. But I want to -- I'm

1 that, showed up on my desk. And I'm not
2 sure -- I wasn't ever personally served with a
3 subpoena. I don't know -- I don't know how
4 that happened exactly, but I think my secretary
5 gave it to me, so it just showed up on my desk
6 as some things -- some things do.

7 Q. So you were never present at that
8 time in the meeting when Mr. Burke apparently
9 talked about litigation strategy and what type
10 of questions would be asked at the deposition?

11 MR. BURKE: Objection. Misstates
12 prior testimony.

13 A. No.

14 MR. BURKE: Assumes facts not in
15 evidence.

16 A. No.

17 Q. Okay. Have you talked to anyone
18 else who's been deposed this week, Mr. Winstead
19 or Mr. Reuter?

20 A. No.

21 Q. Did you subsequently meet with Mr.
22 Fischer or Mr. Gilligan in private?

23 A. Well, I recently did. I met
24 yesterday with Mr. Fischer and Mr. Gilligan.

25 Q. And approximately how long did

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Page 33

1 going to let him go ahead and answer the
2 questions as one of the other witnesses did,
3 even though I, quite frankly, don't agree that
4 that's a proper area of inquiry, but I just
5 want to state that for the record.

6 A. Well, first of all, Mike, I think
7 the meeting you're referring to is a meeting --
8 the only meeting I'm aware of is a meeting in
9 maybe late July. And as I said, I was late for
10 it.

11 The purpose of the meeting in my
12 mind was to discuss -- I had been subpoenaed,
13 so to discuss what my responsibilities were in
14 terms of showing up and when that was going to
15 be scheduled to give the participants an
16 indication of when I would be available and
17 whether that would be -- you know, that could
18 be suitably arranged with you as to place and
19 time and whatnot. So as far as I was
20 concerned, that was the sole purpose of the
21 meeting. Nothing substantive was discussed in
22 my presence at that meeting.

23 Q. When had you been subpoenaed?

24 A. Well, actually I just got a copy
25 of a subpoena maybe, maybe the week prior to

1 that meeting last?

2 A. Well, there were two separate
3 meetings.

4 Q. Approximately how long did these
5 meetings last?

6 A. I would say about a total of an
7 hour and 20 minutes.

8 Q. Do you have an hourly rate at KMK?

9 A. Yes, I do.

10 Q. What is that hourly rate?

11 A. \$350.

12 Q. And are you charging for your
13 time?

14 A. No.

15 Q. Are you paying Mr. Fischer or Mr.
16 Gilligan for their time?

17 MR. BURKE: Objection to
18 relevance.

19 A. Not that I know of.

20 THE WITNESS: Lou, do you want
21 something?

22 Q. Did you perform work --

23 MR. GILLIGAN: I'm willing to act
24 pro bono.

25 THE WITNESS: Great, appreciate

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1 it. I'd do the same thing for you.

2 MR. GILLIGAN: Thank you.

3 BY MR. BRAUTIGAM:

4 Q. Did you perform work with respect
5 to the OHSL-Provident merger?

6 A. Yes.

7 Q. What was your role in the merger?

8 A. I would characterize my role as
9 the lead outside counsel retained to coordinate
10 the various aspects of the transaction.

11 Q. And who was your client?

12 A. The Provident Bank.

13 Q. I think you made a point of saying
14 that you did not represent the Provident
15 directors earlier, is that correct? Or maybe
16 you made it generally.

17 A. Correct.

18 Q. In this case you did not represent
19 the Provident directors, correct?

20 A. Correct.

21 Q. Okay. What were your duties and
22 responsibilities as lead outside counsel?

23 A. Well, in this case my primary
24 responsibility was to negotiate a definitive
25 merger agreement.

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1 of the various legal opinions that were
2 addressed in the merger agreement, the stock
3 option that was executed in connection with the
4 merger and, and other elements as well, which I
5 may or may not recall.

6 Q. Okay. Mr. Matthews, I have placed
7 before you Defendant's Exhibit I and I ask you
8 to take a look at it.

9 A. Do you want me to read it or page
10 through it?

11 Q. Page through it is fine. Mr.
12 Matthews, with respect to this document and
13 with any other, I think I can direct your
14 attention in most cases to the relevant
15 portions, but please feel free to take as much
16 time as you feel you need to review the
17 documents.

18 My questions for you with respect
19 to this document begin with, are you familiar
20 with this document?

21 A. Do you want me to identify it for
22 you?

23 Q. That was one of my next questions.
24 What is Defendant's Exhibit I?

25 A. It appears to be the -- a copy of

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1 Q. And you were acting on behalf of
2 the Provident Bank?

3 A. Correct.

4 Q. And with whom did you negotiate?

5 A. Essentially all of my negotiations
6 were with the law firm of Dinsmore & Shohl.

7 Q. And with which attorneys
8 specifically were you negotiating?

9 A. Primarily Cliff Roe.

10 Q. And what were you negotiating
11 about at various times in the transaction?

12 A. Well, we negotiated about all of
13 the terms of the transaction.

14 Q. Okay. What were some of the major
15 terms of the transaction, in your mind?

16 A. The major terms of the transaction
17 would have included all of the representations
18 and warranties that the parties were to give to
19 each other, would have included all of the
20 specific covenants to be performed by the
21 respective parties prior to the closing, would
22 have included the mechanics of effectuating the
23 merger and how the share exchange process would
24 be accomplished.

25 It would have included the terms

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1 the package of material that went out to each
2 of the OHSL Financial Corp stockholders in
3 connection with the transaction that we have
4 been talking about, which included the
5 definitive proxy statement and prospectus, as
6 well as the exhibits, which included the
7 definitive merger agreement, the stock option
8 agreement, and fairness opinion.

9 Q. This document, Defendant's Exhibit
10 I, is two documents; is that correct? I think
11 you've mentioned that it's a proxy statement as
12 well as a prospectus; is that right?

13 A. When you say "two documents,"
14 it's -- I'm not sure what you mean by that.
15 It's --

16 Q. Okay. Perhaps that was inartfully
17 said. It's one document with two major
18 components, in that one is a proxy statement
19 and one is a prospectus; is that correct?

20 A. That -- that is correct.

21 Q. Okay. What is the purpose of a
22 proxy statement?

23 A. Well, the purpose -- I'll use your
24 term, the purpose of the document as a whole is
25 to, is to inform the OHSL shareholders about

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1 the terms of the proposed transaction, various
 2 risks that are incident to the transaction, the
 3 nature of the transaction, why the transaction
 4 is being proposed, why it's been recommended by
 5 the Board of Directors, the specific terms of
 6 the transaction, and then to disclose to the
 7 shareholders financial information that would
 8 be relevant in assisting the shareholders in
 9 making a decision as to whether to vote in
 10 favor of or against the transaction. And
 11 that's a general statement purpose, in my mind.

12 Q. Okay. And did that include the
 13 prospectus as well, or was that limited to the
 14 proxy statement?

15 A. That's really -- that's really
 16 both of those documents.

17 Q. Okay. Do you believe that it's
 18 important that Defendant's Exhibit 1 be
 19 accurate, truthful and complete?

20 A. Yes.

21 Q. Why do you believe that?

22 A. Well, because you're asking people
 23 to vote on a transaction that affects their
 24 financial interest. The vote, if carried,
 25 would result in the exchange of their

Page 40

1 helpful.

2 Q. Certainly.

3 A. Do you mean whether it carried?

4 Q. Yes. Whether it carried, how it
 5 carried, if it was overwhelming. How would you
 6 describe the shareholder vote?

7 A. My only recollection, Mike, would
 8 be that the vote was sufficient under the
 9 charter documents of OHSL to approve the
 10 transaction and to allow the merger to proceed.
 11 I don't recall what percentage the vote was or
 12 whether it was a large percentage or a small
 13 percentage.

14 Q. Okay. Let me hand you what has
 15 been previously marked as Plaintiff's Exhibit 1
 16 and ask you to take a look at it.

17 MR. GILLIGAN: Mike, is this one
 18 and the other one -- okay, this is Plaintiff's
 19 1, I see.

20 MR. BRAUTIGAM: Exactly.

21 MR. GILLIGAN: Thank you.

22 MR. BRAUTIGAM: You're welcome.

23 BY MR. BRAUTIGAM:

24 Q. If I can direct your attention to
 25 this section here, which is about Oak Hills.

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1 securities with Provident securities, so it was
 2 important that it be accurate.

3 Q. Did you follow the actual vote in
 4 this case?

5 MR. BURKE: Objection to form.

6 A. I'm not sure what you mean by
 7 "follow." I, I -- as responsible for the
 8 entire -- as, you know, the primary outside
 9 counsel responsible for the transaction, yes, I
 10 was aware that a vote was taking place that was
 11 necessary to consummate the transaction.

12 And, of course, I was interested
 13 in what the vote was, whether it carried the
 14 day or not. As to the particulars of the vote,
 15 no, I would not have concerned myself with the
 16 particulars of the vote.

17 Q. What is your understanding of how
 18 the vote went?

19 MR. BURKE: Objection to form.

20 MR. GILLIGAN: If you don't know
 21 what he means by "went," I think you just ask
 22 him to clarify the question, rather than
 23 speculate on what he means.

24 A. Yes. If you would help me in
 25 understanding the question, it would be

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1 A. Okay. This looks like an excerpt,
 2 part of an article that I -- or wait a second,
 3 what part are you -- about Children's Hospital?

4 Q. Starting here.

5 A. Oh, I'm sorry.

6 Q. Excuse my reach.

7 A. Okay. In the middle of this
 8 page -- I've been handed a one page document
 9 that looks like it's a newspaper reprint. And
 10 it is -- it is an article that appears to
 11 discuss Walter Thiemann's complaints.

12 Q. Okay. Have you seen this article
 13 before?

14 A. No.

15 Q. Let me direct your attention to
 16 the extreme right-hand column. Do you see
 17 that?

18 A. Um-hmm.

19 Q. Would you just read that first
 20 bullet point to yourself?

21 MR. BURKE: Objection. Calls for
 22 speculation.

23 Q. To read part of the document to
 24 himself?

25 A. Okay, I've read it.

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1 Q. I'm particularly interested in
2 these words, it says, Burke's response, Hanauer
3 opposed the Provident takeover because he
4 wanted Oak Hills to remain independent. Do you
5 see those words?

6 A. I do.

7 Q. Is that true?

8 MR. BURKE: Objection. Calls for
9 speculation. By the way, Mike, as you well
10 know, this is an inaccurate quote. So you're
11 questioning him on a third-party document which
12 is inaccurate.

13 MR. BRAUTIGAM: Jim, I don't know
14 how you can say --

15 MR. BURKE: Because I'm telling
16 you that it is, because it purports to quote
17 me.

18 MR. BRAUTIGAM: Jim, when we take
19 your deposition, I'll see.

20 MR. BURKE: Well, if you think
21 you're going to take my objection, good luck.
22 But I'll tell you that now. So objection,
23 calls for speculation.

24 A. Well --

25 MR. GILLIGAN: Could you read the

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1 Q. Okay. Why would you be shocked if
2 it were true?

3 MR. BURKE: Objection. Calls for
4 speculation. Don't speculate.

5 MR. BRAUTIGAM: Excuse me, are you
6 instructing this witness?

7 MR. BURKE: No, I'm not.

8 MR. BRAUTIGAM: Well, it seemed
9 like it to me.

10 A. I, I do not know whether it's
11 true.

12 BY MR. BRAUTIGAM:

13 Q. Okay. If it were true --

14 MR. MESH: He's not finished.

15 Q. I didn't mean to interrupt.

16 MR. MESH: I don't want to get
17 involved, you have enough lawyers here.

18 A. I don't know, Mike, if the
19 statement is true, if Hanauer had any personal
20 belief about whether this takeover was good or
21 bad. What I do know, as of the time we did the
22 transaction, I was informed that the Board of
23 OHSL was fully behind the transaction.

24 Q. Did you ever learn that any Board
25 members had resigned in part in protest of the

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1 pending question for me?

2 (Record read by Reporter.)

3 Q. Mr. Matthews, would you like me to
4 re-ask the question?

5 A. Sure.

6 Q. Okay. Mr. Matthews --

7 MR. GILLIGAN: You're not asking
8 him whether Jim actually gave the quote, you're
9 asking whether he knows if what's said there
10 happens to be true?

11 Q. Exactly. So let me just --

12 MR. GILLIGAN: Okay. That's --

13 Q. -- rephrase the question. Is this
14 true, Hanauer opposed the Provident takeover
15 because he wanted Oak Hills to remain
16 independent?

17 MR. BURKE: Objection. Calls for
18 speculation. You may answer.

19 A. It, it is speculation, but I would
20 be shocked if it were true.

21 MR. GILLIGAN: He's asking you if
22 you know of your own personal knowledge whether
23 it's true, Tim. If you don't know, don't
24 speculate. That's all he wants to know.

25 A. I don't know.

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1 transaction?

2 MR. BURKE: Objection. Misstates
3 the record. It's a false statement. You may
4 answer it.

5 A. If I -- I think the answer is no,
6 because, no, I did not know that any director
7 had resigned because of a protest or, or some
8 disagreement with the transaction. I never
9 heard that.

10 Q. Okay. If Mr. Hanauer were against
11 the transaction, would that be important for
12 you to know as the lead outside counsel?

13 MR. BURKE: Objection. Calls for
14 speculation.

15 MR. GILLIGAN: If he had been
16 against it during the time the documentation
17 was being put together?

18 MR. BURKE: What's the time frame?

19 Q. At any time.

20 MR. GILLIGAN: Well --

21 A. Before or after the transaction
22 was completed?

23 MR. GILLIGAN: Yes, that's what
24 I'm --

25 Q. Well, any time up to and including

12 (Pages 42 to 45)

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1 December 3rd, 1999.

2 A. Was he a member of the Board of
3 Directors?

4 Q. Yes, he was.

5 A. Again, I can only speak to my
6 recollection, Mike.

7 Q. Sure.

8 A. My recollection as of the time
9 that we had negotiated the definitive merger
10 agreement was that all of the directors were in
11 favor of the transaction. And, in fact, we had
12 included arrangements with their counsel to
13 have all of the officers and directors agree
14 to, to vote in favor of the transaction and to
15 solicit the proxies, so --

16 Q. You're talking --

17 A. So I would be surprised -- as of
18 the date we signed the merger agreement, I
19 would have been shocked to learn that Mr.
20 Hanauer was opposed to the transaction, because
21 that would have been completely new and
22 different information than what I was given at
23 the time.

24 Q. Who were you given this
25 information by?

1 MR. GILLIGAN: Well, could you go
2 ahead and identify where it's from for me?

3 MR. BRAUTIGAM: That's what I'm
4 about to do.

5 MR. GILLIGAN: Okay, thanks.

6 MR. BRAUTIGAM: It's in the Nolte
7 case, Tuesday, February 22nd, 2000, page 21.

8 MR. GILLIGAN: Could you give me
9 the caption of it? I'm not familiar with it,
10 the name of the case.

11 MR. BRAUTIGAM: Why don't I give
12 you a copy at the break?

13 MR. GILLIGAN: Well, I would like
14 to, as counsel, just have a context of what
15 it's in, that's all I'm asking.

16 MR. BRAUTIGAM: That's fine.
17 Court of Common Pleas, Hamilton County, Ohio,
18 Janet Nolte, et al., Plaintiffs, versus OHSL
19 Financial Corporation, et al., case number
20 A99 --

21 MR. BURKE: Off the record.
22 (Brief recess.)

23 MR. BRAUTIGAM: Mr. Gilligan, have
24 you had the opportunity to get the information
25 you needed about the prior case?

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1 A. Well, I had -- I was in
2 discussions with Cliff Roe, you know,
3 intensively for a period of a couple weeks as
4 we were negotiating the merger agreement. And
5 it was -- and also with the investment banking
6 firm which was representing OHSL, so I would
7 have been generally aware of the attitudes of
8 the participants about the transaction. And as
9 far as I knew, everybody was very positive
10 about it and thought it was in the best
11 interest of the company.

12 Q. Is that true for Ken Hanauer as
13 well?

14 MR. BURKE: Objection to form.

15 A. I -- I believed it was true.
16 Certainly I had every reason to think it was
17 true, based upon what other people had told me.
18 But had -- I had not talked to Ken Hanauer
19 personally about his -- his opinions about the
20 transaction, nor would that have been proper.

21 Q. Okay. Let me represent to you
22 that Mr. Hanauer gave this testimony --

23 MR. GILLIGAN: Is the testimony in
24 this case?

25 MR. BRAUTIGAM: No, it's not.

1 MR. GILLIGAN: Yes, thank you.

2 MR. BRAUTIGAM: You're welcome.

3 MR. GILLIGAN: What page did you
4 say that was again?

5 MR. BRAUTIGAM: Twenty-one, lines
6 11 to 14.

7 BY MR. BRAUTIGAM:

8 Q. Let me represent to you that this
9 is testimony that Mr. Hanauer gave in the Nolte
10 state court litigation. And he was asked this
11 question: In your heart, did you believe that
12 this transaction was in the best interest of
13 the shareholders?

14 Answer: No, sir.

15 Is that something that you would
16 have wanted to have known as the lead outside
17 counsel in the merger transaction?

18 MR. BURKE: Objection. Misstates
19 the record. You read two sentences out of a
20 150 page deposition. Mischaracterizes the
21 record.

22 MR. MAUNDRELL: I'll join in with
23 it.

24 MR. BURKE: Also no time frame.

25 A. Yes, Mike, when -- when I was

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1 working with Cliff on this transaction to
2 negotiate an agreement, as I said before, it
3 was my understanding that the directors were
4 fully behind the transaction. And so -- and if
5 I recall correctly, Ken signed the agreement
6 that, that, you know, in favor of this
7 transaction.

8 And furthermore, the company had
9 agreed -- or the -- at least we had discussed
10 with Cliff Roe that -- the concept that, that
11 the officers and directors were in favor of the
12 transaction. So, yes, I would have been
13 totally surprised.

14 At the time the definitive
15 agreement was signed, it was my understanding,
16 as I've said before, that everybody was in
17 favor of this and, in fact, enthusiastic about
18 it, because they had been -- if I recall
19 correctly, they had been bidding -- they had
20 bids out over a period of months and tried to
21 find other people to buy this company and
22 Provident's bid was the best. So yes, I would
23 have liked to have known that, because it would
24 have been news to me.

25 Q What would you have done

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1 bid, but, yes, I was generally aware of the
2 fact that there were other institutions that
3 were looking at OHSL and that -- for various
4 reasons those, those bids or those indications
5 of interest did not measure up.

6 Q Did they result in bids, to your
7 knowledge?

8 MR. BURKE: Objection. Asked and
9 answered.

10 A I don't recall.

11 Q Is it possible that Provident's
12 bid was the best because it was the only bid?

13 MR. GILLIGAN: Objection.

14 MR. BURKE: Objection. Calls for
15 speculation.

16 MR. GILLIGAN: He can't possibly
17 answer it if he doesn't know what the other
18 bids were.

19 A Again, let me clarify my previous
20 testimony. When we talk about a bid, I don't
21 -- I would be, again, shocked if there
22 wasn't -- if Provident was the only one. That
23 does not sound right at all to me, because
24 there would be -- there would have been other
25 financial institutions that the investment

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1 differently, had you known that?

2 MR. MAUNDRELL: Objection.

3 MR. BURKE: Objection. Calls for
4 speculation. Assumes facts not in evidence.

5 A Mike, I'd have to -- I'd have to
6 think about what would have been required that
7 was different. I don't know that I'm prepared
8 to answer that question. It's -- it's been a
9 while, so it's -- so I'd have to really think
10 that through and I'm not sure what I would have
11 done differently.

12 Q Mr. Matthews, you mentioned
13 something about Provident's bid being the best,
14 or words to that effect. Do you remember that
15 testimony?

16 A Um-hmm.

17 Q Were there other bids to buy OHSL
18 in the summer of 1999?

19 A I was not privy to the, to the
20 bids themselves, but I was aware generally that
21 there was a -- was a process that the
22 investment bankers had followed that included
23 entertaining other bidders. And that other
24 companies had looked at the company, had either
25 submitted lower bids or, or had declined to

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1 bankers would have talked to.

2 Now, whether they had given
3 indications of interest that did not rise to
4 the level of a formal, written bid, I don't
5 know. As I said before, I don't recall whether
6 that was the case, but Provident was -- could
7 not have been the only institution that the
8 bankers talked to.

9 Q Ken Hanauer was the largest OHSL
10 shareholder; is that correct?

11 MR. BURKE: Objection. Calls for
12 speculation.

13 MR. GILLIGAN: If you know.

14 A I do recall that he had a -- he
15 didn't have a majority of the shares, if I
16 recall correctly, but he did have -- I seem to
17 recall a substantial plurality of the shares
18 being held by Ken and maybe some affiliates,
19 trusts, children.

20 Q Does 4.9 percent shares that he
21 controlled sound about right?

22 A I don't recall. I couldn't give
23 you a percentage.

24 Q How did Mr. Hanauer vote his
25 shares?

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1 A. I don't know.

2 MR. GILLIGAN: Now, these are
3 questions if you know. He doesn't want you to
4 speculate.

5 A. I don't know.

6 Q. You mentioned something earlier
7 about voting agreements. Do you recall that
8 testimony?

9 A. I do.

10 Q. What are voting agreements?

11 A. Well, there are all different
12 kinds of voting agreements. You can have a --
13 you can have in effect a voting trust where
14 someone places securities in a trust to be --
15 to be voted in a certain way. A proxy is a
16 form of voting agreement. A power of attorney
17 can be considered a voting agreement.

18 In the context in which I'm
19 referring to a voting agreement, I'm
20 communicating to you that there was an
21 understanding between the parties that the
22 company would make an effort to ensure that the
23 officers and directors voted in favor of the
24 merger.

25 Q. Were voting agreements used in

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1 Q. Did you read every word and look
2 at every number in that document?

3 A. No.

4 Q. What portions, if any, did you
5 review?

6 A. Well, I would have read every word
7 in the Agreement and Plan of Merger. I would
8 have read every word in the document that's
9 identified as Annex B, I think.

10 Q. The fairness opinion?

11 A. No. Annex B is the stock option
12 agreement.

13 Q. Okay.

14 A. Okay. I would have read every
15 word in Annex C, which is the fairness opinion.
16 I did review the prospectus and proxy
17 statement. So the textual material there, I
18 would have -- I would have reviewed as to form.

19 Q. What pages are you referring to?

20 A. Well, I'm referring to the body of
21 the prospectus and proxy statement, which
22 starts -- it's really the third page of the
23 document, on to the end of the document. But I
24 would not have -- I would not have analyzed or
25 really had any opinion about the specific

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1 this case?

2 A. Again, I think that there was a
3 provision in one of the documents that I don't
4 have a specific recollection about that dealt
5 with voting, but I don't recall that there were
6 any separate instruments that constituted full
7 voting trust or voting agreements per se.

8 Q. As part of this transaction, did
9 someone from KMK review OHSL's Board minutes
10 and major committee minutes for the last five
11 years or so?

12 A. I don't recall.

13 Q. Is that typically done in mergers
14 and acquisitions of this type?

15 MR. BURKE: Objection. Calls for
16 speculation.

17 A. Sometimes it is and sometimes it
18 isn't. It's not -- certainly not necessary.

19 Q. Okay. Let me direct your
20 attention to Defendant's Exhibit 1. Did
21 someone from KMK read every word and look at
22 every number in that document?

23 MR. BURKE: Objection. Calls for
24 speculation.

25 A. I don't know.

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1 numbers or the financial statements which were
2 being provided. And I would not have read or
3 reviewed necessarily every document that was
4 incorporated by reference in the document.

5 Q. Did you read the first page of
6 Defendant's Exhibit 1?

7 A. I don't think I did.

8 Q. Who wrote the first page of
9 Defendant's Exhibit 1?

10 MR. BURKE: Objection, foundation.
11 Calls for speculation.

12 A. I don't know.

13 Q. Do you know what computer system
14 Defendant's Exhibit 1 came off, the entire
15 document?

16 MR. BURKE: Same objection,
17 foundation.

18 A. No.

19 Q. Do you know what computer system
20 the first page of Defendant's Exhibit 1 came
21 off?

22 A. Isn't that -- I'm sorry, I thought
23 that was the same --

24 Q. I said the whole document and then
25 I narrowed it to the first page.

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1 A. Oh, I, I -- I'm sorry, I'm a
2 little confused as to the first question then.
3 Q. Okay.
4 A. I thought you were referring to
5 the first page in both instances.
6 Q. No, no, no. What computer system
7 did the entire document come off, if you know?
8 I think you said you don't know.
9 MR. GILLIGAN: You mean, okay,
10 every -- if you know. He's talking about every
11 page.
12 Q. Correct.
13 MR. GILLIGAN: Including the very
14 first page to the very last. You've already
15 said you don't know.
16 A. I don't know.
17 Q. New question.
18 MR. GILLIGAN: Now he wants to ask
19 you -- go ahead.
20 Q. Limiting this to the first page,
21 do you know what computer system the first page
22 came off?
23 MR. BURKE: Objection. Asked and
24 answered.
25 A. No, I do not.

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1 Q. Did you ever see a draft of the
2 first page of this document?
3 A. I have no specific recollection of
4 reviewing this cover letter, no.
5 Q. Is it common that a cover letter
6 of this sort have both the signatures of the
7 chief executive officer and the chairman of the
8 Board if they're different people?
9 MR. MAUNDRELL: Objection.
10 MR. BURKE: Objection. Calls for
11 speculation.
12 MR. MAUNDRELL: And foundation.
13 A. I would say sometimes yes and
14 sometimes no. Again, it's just a cover letter.
15 It's not necessary.
16 Q. As the lead outside counsel, would
17 it concern you if I represented that Mr.
18 Hanauer's testimony was that a draft of the
19 first page of Defendant's Exhibit 1 was
20 circulated with his signature on it and he
21 directed that it be removed?
22 MR. BURKE: Objection.
23 MR. GILLIGAN: Is this testimony
24 in the Nolte case or his testimony where?
25 MR. BRAUTIGAM: In the Nolte case.

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1 Mr. Hanauer has not yet been deposed in this
2 case.
3 MR. GILLIGAN: I have no clue
4 where he's been deposed.
5 MR. BURKE: Misstates the record
6 from Mr. Hanauer's testimony.
7 MR. GILLIGAN: Just take the sound
8 bite as it is. He's represented it's from the
9 Nolte case. If you know, you know; if you
10 don't, you don't.
11 MR. BURKE: Objection. Calls for
12 speculation.
13 A. I don't know anything about what
14 you --
15 BY MR. BRAUTIGAM:
16 Q. Would it concern you as the lead
17 outside counsel?
18 MR. MAUNDRELL: Objection.
19 MR. BURKE: Objection. Assumes
20 facts not in evidence.
21 A. Not necessarily. I mean, it's
22 just a cover letter, so who signs it and for
23 what reason may or may not be important, so
24 I -- I would say no, not necessarily.
25 Q. What factors would you want to

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1 consider in determining whether or not who
2 signs it and who doesn't would be important?
3 MR. BURKE: Objection. Calls for
4 speculation.
5 MR. MAUNDRELL: Objection.
6 MR. BURKE: This is an OHSL
7 document. Are you talking if he was counsel
8 for OHSL, counsel for Provident? I mean, what
9 are you talking about? Or as Provident's
10 counsel would he be concerned about OHSL? The
11 question is ambiguous.
12 A. Yes. I -- Mike, I -- I think that
13 depends on so many different things. As
14 Provident's lawyer here, I wasn't -- I was not
15 concerned with who signed the cover letter to
16 the proxy statement.
17 And, and unless there was
18 something, you know, major going on that we all
19 needed to know about -- Provident needed to
20 know about or I needed to know about, whether
21 one person signs this cover letter or another
22 person signs this letter is immaterial.
23 Q. Would the opposition to the merger
24 transaction by the CEO of OHSL be something
25 major in your mind?

16 (Pages 58 to 61)

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1 MR. BURKE: Objection.
 2 MR. MAUNDRELL: Objection.
 3 MR. GILLIGAN: You're asking him
 4 to assume --
 5 MR. BURKE: Misstates the record.
 6 MR. GILLIGAN: -- hypothetically?
 7 MR. BRAUTIGAM: No, those are the
 8 facts in this case.
 9 MR. GILLIGAN: Well, he's already
 10 indicated in his testimony, Mike, that he was
 11 not aware of any opposition whatsoever. You're
 12 now asking him a question, saying that there
 13 was opposition.
 14 MR. BRAUTIGAM: Okay.
 15 MR. GILLIGAN: And he's already
 16 said that he was not aware that there was any.
 17 All I'm asking you is, you're asking him a
 18 hypothetical question, to assume that there was
 19 some that he's not aware of. That's different.
 20 MR. BRAUTIGAM: Let me rephrase
 21 the question.
 22 MR. GILLIGAN: Okay.
 23 BY MR. BRAUTIGAM:
 24 Q Mr. Matthews, let me represent to
 25 you that Mr. Hanauer testified that he was

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1 A. You're asking me to speculate as
 2 to how --
 3 MR. GILLIGAN: No, if you have to
 4 speculate, he doesn't want you to do that.
 5 That's against the rules of evidence. So if
 6 you have to speculate, say I'd have to
 7 speculate so I can't answer. But if you can
 8 answer without speculating, please answer.
 9 A. If your question is -- you know if
 10 you're asking me to speculate about how he
 11 actually voted his shares, I can't do that.
 12 But if you're asking me whether I believed he
 13 would vote his shares in favor of the merger,
 14 my answer is I believed he would vote his
 15 shares in favor of the merger.
 16 Q. And what was that belief based
 17 upon?
 18 A. That was based upon, again, the
 19 information from Cliff and the investment
 20 bankers that the directors were enthusiastic
 21 about the transaction.
 22 Q. Okay. Did you ever learn how Mr.
 23 Hanauer had actually voted his shares?
 24 A. No.
 25 Q. Let me represent to you that Mr.

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1 opposed to the OHSL-Provident merger. Is that
 2 in your mind something major going on that the
 3 entire team should be informed about?
 4 MR. BURKE: I will object. That
 5 absolutely misstates the record in this case.
 6 That is a false representation of his
 7 testimony. Calls for speculation, incomplete
 8 hypothetical.
 9 MR. MAUNDRELL: And I'll join in
 10 with that.
 11 A. Again, not necessarily. For
 12 example, he may have had personal issues that
 13 were irrelevant to what was in the best
 14 interest of the shareholders, for all I know,
 15 based on the speculation. But I'm telling you
 16 what my understanding was at the time the
 17 merger agreement was signed, was that everybody
 18 was on board and enthusiastic about the
 19 transaction.
 20 Q. How would you have expected Mr.
 21 Hanauer to have voted his personal shares?
 22 MR. BURKE: Objection.
 23 MR. MAUNDRELL: Objection.
 24 MR. GILLIGAN: Answer if you can.
 25 MR. BURKE: Calls for speculation.

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1 Hanauer voted his shares and the shares he
 2 controlled against the merger transaction.
 3 Does that surprise you?
 4 MR. BURKE: Objection.
 5 MR. MAUNDRELL: Objection.
 6 MR. BURKE: Calls for speculation.
 7 You're asking him to assume double, triple
 8 levels of speculation here and then draw
 9 conclusions. It's an improper question.
 10 Objection to form.
 11 A. You know, again, depending upon
 12 why he did that, maybe he changed his mind
 13 again for some personal reasons, I don't know.
 14 You know, I'm surprised, based upon my
 15 knowledge at the time the merger agreement was
 16 signed, because again, I expected that
 17 everybody was -- was in favor of the
 18 transaction.
 19 It was a good transaction for the
 20 shareholders, so that's -- and that was -- and
 21 it was my belief that that was how all of the
 22 directors and officers of the company felt
 23 about the transaction at that time. So you
 24 know, if I knew more, perhaps.
 25 Q. Based on what we've discussed

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1 today, as the lead outside counsel would you
2 have wanted to know more based upon these
3 representations?

4 MR. BURKE: Objection. Calls for
5 speculation.

6 MR. GILLIGAN: After the fact?
7 After the vote had occurred, talking about that
8 point in time?

9 Q. Talking about at any point, if you
10 had learned --

11 MR. GILLIGAN: I'm just trying to
12 understand your question, Mike. In other
13 words, you've represented something that Tim
14 doesn't know, that is that when Hanauer voted,
15 he voted against the transaction, right?

16 MR. BRAUTIGAM: Right. And also
17 that he did not believe the transaction was in
18 the best interest of OHSL shareholders.

19 MR. BURKE: Which you --

20 MR. GILLIGAN: You're saying he
21 testified to that?

22 MR. BRAUTIGAM: Yes.

23 MR. GILLIGAN: Okay. Now you're
24 asking Tim to assume that to be accurate?

25 MR. BRAUTIGAM: No. I'm

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1 MR. BRAUTIGAM: Okay. I don't
2 want to confuse you.

3 THE WITNESS: Yes.

4 MR. BRAUTIGAM: Let me see if I
5 can simplify things.

6 THE WITNESS: Okay.

7 BY MR. BRAUTIGAM:

8 Q. As the lead outside counsel for
9 Provident Bank, if you had known that Mr.
10 Hanauer was against the transaction, would you
11 have done anything differently?

12 MR. BURKE: Objection. Misstates
13 the record.

14 MR. GILLIGAN: Objection. At what
15 time?

16 A. At what time?

17 Q. At any point in time, up to and
18 including the December 3rd, 1999 closing.

19 MR. BURKE: Objection. Misstates
20 the record. Assumes facts not in evidence.

21 MR. MAUNDRELL: I'll join in with
22 that.

23 MR. BURKE: Calls for speculation.

24 A. This is similar to the question I
25 think you've already asked me, which was at the

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1 representing to him that these are facts.

2 MR. GILLIGAN: Okay. But then
3 you're asking him to accept those as being
4 fact?

5 MR. BRAUTIGAM: Yes.

6 MR. GILLIGAN: Okay. And then
7 what's the question with -- based on those
8 facts? What are you asking him?

9 MR. BRAUTIGAM: As lead outside
10 counsel, would he have wanted to know more.

11 MR. GILLIGAN: After the fact,
12 after the vote had taken place? Well, it has
13 to be.

14 MR. BURKE: It has to be.

15 MR. GILLIGAN: Go ahead.

16 MR. BRAUTIGAM: I think there are
17 different votes. My question stands. There's
18 a vote as a director, there's a vote as a
19 shareholder. So my question goes to the summer
20 of 1999.

21 MR. BURKE: Objection. Compound
22 question. That's completely improper. You've
23 got totally different time frames.

24 THE WITNESS: Mike, I'm confused
25 as to your question as well, because --

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1 time the merger agreement was signed, would I
2 have done something different had I known that
3 he objected to the merger.

4 And my answer at that time was, I
5 believe that I would have to think about it. I
6 mean, it was a complicated transaction. I
7 don't know what the import of his objection or
8 what his objections might have been, whether
9 they would have been important to other
10 shareholders or whether they were purely for
11 personal reasons.

12 I would -- I did not -- I would
13 not have known and would have had to inquire
14 about whether this would have affected anybody
15 else's vote at the time the Board voted. There
16 are so many different factors here, I just -- I
17 think this is a -- from my point of view, this
18 is a pure hypothetical and purely speculative,
19 because it's contrary to my understanding of
20 the facts at the time.

21 Q. But if you knew these things to be
22 true, you would have inquired further, is that
23 fair?

24 MR. BURKE: Objection.

25 MR. MAUNDRELL: Objection. Asked

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1 and answered.

2 MR. GILLIGAN: Objection. At what
3 point? At what point in time?

4 Q. Do you understand the question?

5 MR. MAUNDRELL: Well, you're
6 asking him --

7 A. Well --

8 MR. MAUNDRELL: Hold on. You're
9 asking him now to agree to your
10 recharacterization and rephrasing of his answer
11 and I object to that.

12 A. I think I've answered this maybe
13 twice, but --

14 MR. GILLIGAN: Then you don't have
15 to answer again, Tim.

16 A. Okay.

17 MR. GILLIGAN: Let's get a new
18 question that makes --

19 Q. Do you agree that the --

20 MR. GILLIGAN: -- sense.

21 Q. Do you believe that Mr. Hanauer's
22 vote against the transaction should have been
23 disclosed to the OHSL shareholders?

24 MR. BURKE: Which vote?

25 MR. BRAUTIGAM: As a shareholder.

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1 already answered the question about the vote as
2 a member of the Board of Directors, so if we're
3 now talking about how he voted his shares in
4 whenever, December -- let's identify which one.

5 MR. BURKE: Just make it a
6 meaningful question, a clear question that you
7 can get an answer to so we just don't have a
8 mucked up record.

9 THE WITNESS: Mike, which vote are
10 you referring to?

11 BY MR. BRAUTIGAM:

12 Q. Okay. Let's talk about two votes.
13 Mr. Hanauer, I believe, voted on August 2nd,
14 1999 as a director in favor of the merger
15 transaction with Provident. Are you with me so
16 far?

17 A. I understand that.

18 MR. GILLIGAN: Are you asking him
19 if he knows that to be so?

20 MR. BRAUTIGAM: No, I'm
21 representing that to him.

22 MR. GILLIGAN: All right, fine.

23 BY MR. BRAUTIGAM:

24 Q. Okay. If you had known that Mr.
25 Hanauer did not believe that the transaction

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1 MR. BURKE: The vote as a
2 shareholder that occurred a month after the
3 proxy statement was issued? Is that what
4 you're saying?

5 MR. BRAUTIGAM: It occurred when
6 it occurred.

7 MR. BURKE: You're misleading the
8 witness.

9 MR. GILLIGAN: You can't answer
10 it, Tim.

11 MR. BURKE: Objection to
12 speculation.

13 MR. GILLIGAN: I instruct you not
14 to answer unless we get it clarified. Mike,
15 all we're asking you to do is let's make sure
16 what the question is. As I understand it, and
17 I'm not familiar with all of the facts of the
18 case, but you yourself mentioned there was a
19 vote that Hanauer made sometime, I guess in the
20 summer, having to do with -- as a Board of
21 Directors member.

22 And then we're talking about
23 somebody voting their shares at the end of the
24 day, if you will, in December. There's two
25 different votes. And we keep trying to -- he's

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1 was in the best interest of OHSL shareholders
2 at or about August 2nd, 1999, would you have
3 taken any action differently?

4 MR. BURKE: Objection.

5 MR. MAUNDRELL: Objection.

6 MR. BURKE: Misstates the record.
7 It also -- as counsel for Provident?

8 MR. GILLIGAN: If you've already
9 answered it, just refer to your answer. If you
10 haven't answered, give an answer. I think he's
11 already said that it has so many variables, he
12 can't give you an answer. Isn't that what you
13 testified to, or not?

14 A. Mike, I -- at that time, and the
15 time that I'm referring to is the time that the
16 merger agreement was executed -- and I note
17 here that my recollection was correct, that he
18 actually signed the definitive merger
19 agreement -- I would have been surprised if he
20 was opposed to the merger, because I had been
21 told that he was in favor of the merger, that
22 he had voted in favor of the merger, and that
23 the entire Board was enthusiastic about the
24 prospects of this merger.

25 So would I have done something

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1 different? Possibly. I'm not sure what that
2 would have been today though, not knowing, you
3 know, all of the details, you know, four years
4 later about the transaction and what was
5 transpiring at the time. I certainly would
6 have asked the question, why would he vote in
7 favor of the merger, which he did on August
8 2nd, if he was actually against the merger.
9 That would make no sense to me, so I probably
10 would ask why.

11 Q. Okay. Let me direct your
12 attention to a different vote. Contrary to
13 what Mr. Gilligan said, this vote took place on
14 October 25th, 1999. Are you with me? This was
15 the OHSL shareholder special meeting where the
16 proxies were tallied and people could vote, et
17 cetera.

18 A. Okay, yes.

19 Q. Were you aware that Mr. Hanauer
20 made a presentation to the OHSL shareholders
21 who was assembled at Dante's restaurant at that
22 meeting?

23 MR. BURKE: Objection. Calls for
24 speculation, foundation.

25 A. No, because I was not at that

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1 A. I'm confused by that. There
2 was -- up until --

3 MR. BURKE: Objection. Calls for
4 speculation, too.

5 A. Right. I'm confused about your
6 question, because -- can you repeat the
7 question verbatim, please?

8 (Record read by Reporter.)

9 MR. BURKE: Objection. Calls for
10 speculation. Assumes facts not in evidence.
11 You may answer it.

12 A. The question makes no sense to me,
13 Mike, because there was no prior opportunity to
14 vote as a shareholder against the transaction,
15 as the question states.

16 Q. What I meant was he returned his
17 proxy card voting against the transaction.
18 That's what I meant by a prior opportunity to
19 vote. Do you follow me?

20 MR. BURKE: Objection to form.

21 MR. MAUNDRELL: I'll join in.

22 A. I --

23 Q. You're not following me?

24 A. Well, I think you're confused as
25 to the process.

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1 meeting.

2 Q. Okay. But that's typically how
3 things are done, an officer or director of the
4 company makes a presentation to the
5 shareholders?

6 MR. BURKE: Objection. Calls for
7 speculation.

8 MR. MAUNDRELL: Object to form.

9 A. Not necessarily. Again, there --
10 it can happen in a variety of different ways.

11 That's only one way that it may happen.

12 Q. Okay. Let me represent --

13 A. Fundamentally, all you need is a
14 vote.

15 Q. Let me represent to you that Mr.
16 Hanauer made a presentation to the OHSL
17 shareholders, and I think I even have the
18 script and we can talk about it this afternoon.

19 Would it surprise you if Mr.

20 Hanauer made a presentation soliciting votes in
21 favor of the transaction when he had
22 previously, at some point, voted his shares
23 against the transaction?

24 MR. BURKE: Objection. Misstates
25 the record.

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1 MR. MAUNDRELL: Well, you're
2 asking questions, Mike, about total
3 hypotheticals based on things he didn't --

4 MR. BURKE: Why don't you ask what
5 he did?

6 A. The proxy cards could have sat in
7 a mailbox until they were counted. I have no
8 knowledge of what happened to the proxies prior
9 to the shareholders meeting. They very well,
10 as in many cases, would sit in a box, waiting
11 to be tabulated.

12 Q. Would it surprise you if Mr.
13 Hanauer ran a meeting, asking for votes in
14 favor of the transaction, when he had voted his
15 shares against the transaction?

16 MR. MAUNDRELL: Objection.

17 MR. BURKE: Objection. Calls for
18 speculation. Assumes facts not in evidence.
19 You may answer.

20 MR. MAUNDRELL: And we're back to
21 the same thing we were at ten or fifteen
22 minutes ago about which votes, et cetera, et
23 cetera, et cetera.

24 MR. BRAUTIGAM: No, we're not.
25 We're on October 25th, 1999.

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1 MR. MAUNDRELL: Yes, we are.
 2 Listen to your question.
 3 THE WITNESS: Mike, your question
 4 makes no sense to me.
 5 MR. BRAUTIGAM: Perhaps all of
 6 these objections make it so --
 7 MR. MAUNDRELL: No, perhaps your
 8 question makes no sense.
 9 BY MR. BRAUTIGAM:
 10 Q. Okay. Mr. Matthews, October 25th,
 11 1999, Dante's restaurant, special meeting of
 12 OHSL shareholders. Are you with me so far?
 13 A. Yes.
 14 Q. Let me represent to you that Mr.
 15 Hanauer made a presentation to a group of
 16 assembled OHSL shareholders. Are you with me
 17 so far?
 18 A. I assume your assumptions or
 19 representations.
 20 Q. Okay. Now, my next representation
 21 is Mr. Hanauer at that meeting solicited the
 22 votes of OHSL shareholders, even though he had
 23 voted against the transaction himself. Does
 24 that surprise you?
 25 MR. BURKE: Objection. Assumes

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1 of --
 2 Q. Okay. And can you accept my
 3 representation that Mr. Hanauer had voted his
 4 shares against the transaction?
 5 A. No.
 6 Q. Why not?
 7 A. Because the votes were to be cast
 8 at the meeting. And if he was present and in
 9 person at the meeting to cast a vote, I do not
 10 understand what you mean by having a prior
 11 vote, or as having submitted a prior -- a prior
 12 vote. It doesn't make any sense to me.
 13 Doesn't make any sense to me, that's -- that's
 14 all I'm saying.
 15 Q. Would it bother you if Mr. Hanauer
 16 asked shareholders to vote for the transaction
 17 when he voted against the transaction himself?
 18 MR. BURKE: Objection.
 19 MR. MAUNDRELL: Objection.
 20 MR. BURKE: Asked and answered.
 21 Assumes facts not in evidence.
 22 MR. GILLIGAN: You've already
 23 answered that, I think.
 24 A. I think I have.
 25 MR. GILLIGAN: He said he couldn't

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1 facts not in evidence.
 2 MR. MAUNDRELL: Objection.
 3 MR. GILLIGAN: Solicited votes in
 4 favor?
 5 Q. Yes.
 6 MR. BURKE: Calls for speculation.
 7 This witness has no knowledge of this.
 8 A. I don't have any knowledge of it,
 9 I wasn't there. And again, the question
 10 assumes a process which, which is different
 11 from what I understand to be the correct
 12 corporate process for voting.
 13 Q. Well, can you accept my
 14 representation that Mr. Hanauer made a
 15 presentation at the meeting?
 16 A. Sure.
 17 MR. BURKE: Objection. Asked and
 18 answered.
 19 Q. And can you accept my
 20 representation that this presentation asked
 21 shareholders to vote affirmatively in the
 22 transaction?
 23 MR. BURKE: Asked and answered.
 24 Objection.
 25 A. I can accept that as a statement

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1 answer that, Mike, so I think we ought to move
 2 on.
 3 Q. Mr. Matthews, are you generally
 4 familiar with the Hewlett Packard-Compaq
 5 combination?
 6 MR. BURKE: Objection to
 7 relevance.
 8 A. I'm aware of the fact that it
 9 occurred, yes.
 10 Q. Okay. Are you aware of the fact
 11 that one of the family members involved was a
 12 director of Hewlett Packard?
 13 A. No.
 14 Q. Were you aware that this family
 15 member, I think his name was David Packard, I'm
 16 not a hundred percent sure, voted in favor of
 17 the merger with Compaq as a director?
 18 A. No.
 19 Q. Were you aware that he later
 20 changed his mind and actively lobbied against
 21 the merger transaction -- voted his shares
 22 against the merger transaction?
 23 A. No.
 24 Q. Do you believe that in such a
 25 circumstance, the director's opposition should

21 (Pages 78 to 81)

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1 be disclosed?

2 MR. MAUNDRELL: Objection.

3 MR. BURKE: Objection. Calls for
4 speculation. Assumes facts not in evidence.
5 Completely irrelevant.

6 A. I think that's a ridiculous
7 question, Mike, because there are so many
8 things that could go into a process such as
9 this. I mean, how am I supposed to speculate
10 as to whether that is something that should or
11 shouldn't be disclosed? I don't know anything
12 about it.

13 Q. Do you think that if Mr. Hanauer
14 was opposed to the merger transaction, that his
15 opposition should have been disclosed?

16 MR. MAUNDRELL: Objection.

17 MR. BURKE: Objection. Asked and
18 answered about eight times.

19 MR. GILLIGAN: Do you feel that
20 you've answered the question, Tim? If you
21 have, then don't answer.

22 A. I do.

23 MR. BURKE: Assumes facts not in
24 evidence.

25 A. I feel like I've answered that

1 mean by a change in the composition of the
2 Board, then that would be my -- the extent of
3 my knowledge about it.

4 Q. Who told you this?

5 A. I think that Charles Crowley told
6 me that.

7 Q. And did you inquire further?

8 A. Maybe Jeff Moritz. I'm not sure.

9 No. Well, I -- no, it really wasn't -- didn't
10 seem relevant at the time, so I did not inquire
11 further.

12 Q. Why did it not seem relevant?

13 A. Well, because what -- what I
14 recall about the situation was that one of the
15 directors had resigned for personal reasons.
16 It didn't seem to be my place to ask about what
17 those reasons were, and so I didn't. And
18 again, it didn't -- it didn't appear to effect
19 anything relating to the transaction, so it was
20 irrelevant to me.

21 Q. Did you ever ask to see the
22 resignation letter?

23 A. No.

24 Q. Did you ever discuss this matter
25 with Cliff Roe?

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1 question.

2 Q. How many directors did OHSL have
3 in 1999?

4 A. I don't recall.

5 Q. Did the composition of the Board
6 ever change in 1999?

7 MR. BURKE: Objection.
8 Foundation.

9 MR. GILLIGAN: He's asking you if
10 you know.

11 A. I do recall that the composition
12 did change.

13 Q. Okay. What were the circumstances
14 under which the composition of the Board did
15 change?

16 MR. BURKE: Objection. Calls for
17 speculation. Foundation.

18 A. I do not -- I do not know the
19 circumstances.

20 Q. How do you know that the
21 composition of the Board changed?

22 A. Well, at some point prior to the
23 closing of the transaction someone told me, I
24 believe, that one of the directors had
25 resigned. And so that -- if that's what you

1 A. I don't think so.

2 Q. Were you concerned about the
3 timing of the resignation, vis-a-vis the merger
4 transaction?

5 MR. BURKE: Objection. Asked and
6 answered.

7 MR. MAUNDRELL: I'll join in with
8 that.

9 A. No.

10 Q. Why not?

11 MR. MAUNDRELL: Objection.

12 MR. BURKE: Why was he not --
13 objection. Asked and answered.

14 MR. MAUNDRELL: Asked and
15 answered.

16 A. Because I was informed that he had
17 resigned for personal reasons and that's -- I
18 took it at face value that that was the case.

19 Q. Okay. Let me direct your
20 attention to the first page of Defendant's
21 Exhibit I.

22 A. Okay.

23 Q. Could you read the paragraph that
24 begins, Your Board of Directors unanimously
25 approved the acquisition to yourself, please?

22 (Pages 82 to 85)

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1 MR. BURKE: Objection, foundation.
 2 He already testified he never read this.
 3 A. Okay.
 4 Q. Mr. Matthews, as the lead outside
 5 counsel for Provident Bank, you should have no
 6 trouble understanding this document, correct?
 7 MR. BURKE: Objection, relevance.
 8 MR. GILLIGAN: Can you please
 9 clean up the question? Seriously, Mike. You
 10 asked him to read one paragraph on one page.
 11 A. One paragraph.
 12 MR. GILLIGAN: And you now said
 13 the document.
 14 MR. BRAUTIGAM: It's a different
 15 question.
 16 MR. GILLIGAN: Oh, all right. I'm
 17 sorry. I --
 18 THE WITNESS: I'm sorry, what was
 19 the question?
 20 BY MR. BRAUTIGAM:
 21 Q. The question is: As the lead
 22 outside counsel for Provident Bank in this
 23 transaction, you should have no trouble reading
 24 and interpreting Defendant's Exhibit 1,
 25 correct?

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1 speculation, foundation.
 2 MR. GILLIGAN: He's now asking you
 3 if you know that it is.
 4 A. Well, it was certified to us to be
 5 true, so I believe it to be true.
 6 Q. What, if anything, did KMK do to
 7 check the veracity of that statement?
 8 MR. BURKE: Objection. Assumes
 9 facts not in evidence. Calls for speculation.
 10 You may answer.
 11 A. I don't recall.
 12 Q. Do you believe that as a general
 13 matter of corporate governance, that the
 14 shareholders of a company are entitled to know
 15 who their directors are at any particular time?
 16 MR. BURKE: Objection. Calls for
 17 speculation. Vague, ambiguous.
 18 MR. GILLIGAN: Can you answer that
 19 as posed? If you can't, then --
 20 A. I'm thinking about it.
 21 MR. GILLIGAN: You're allowed to
 22 ask him what he means.
 23 A. I, I would have to think about
 24 that some more before answering that question.
 25 Q. Okay. We'll come back to that.

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1 MR. BURKE: Objection.
 2 A. You mean the entire document?
 3 MR. MAUNDRELL: The entire
 4 document?
 5 MR. GILLIGAN: The document as a
 6 whole?
 7 Q. Yes.
 8 A. Well, taken as a whole, no, I
 9 wouldn't have any problem reading and
 10 interpreting what it is or what it means.
 11 Q. Okay. And is the same true for
 12 the first page or the cover letter of
 13 Defendant's Exhibit 1?
 14 A. Okay.
 15 Q. So you can read and understand
 16 that cover letter, correct?
 17 A. Sure.
 18 Q. Okay. Let's focus on the
 19 sentence, Your Board of Directors unanimously
 20 approved the acquisition and believes that it
 21 is in the best interest of OHSL stockholders.
 22 Did I read that correctly?
 23 A. Yes.
 24 Q. Is that sentence true?
 25 MR. BURKE: Objection. Calls for

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1 A. Okay.
 2 Q. The director who resigned, do you
 3 know that his name was Thomas M. Herron?
 4 A. I -- I do not recall that that was
 5 his name.
 6 Q. Okay. Well, that is his name and
 7 I just want to use that for purposes of our
 8 discussion.
 9 A. Okay.
 10 Q. Was Mr. Herron's resignation ever
 11 disclosed to the OHSL shareholders?
 12 MR. BURKE: Objection. Calls for
 13 speculation. You may answer.
 14 A. I don't know.
 15 Q. Do you believe that Mr. Herron's
 16 resignation should have been disclosed to the
 17 shareholders?
 18 MR. MAUNDRELL: Objection.
 19 MR. BURKE: Objection. Calls for
 20 speculation, foundation.
 21 A. Not necessarily.
 22 Q. Under what circumstances should it
 23 be disclosed and under what circumstances
 24 should it not be disclosed, in your view?
 25 MR. MAUNDRELL: Objection, form,

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1 foundation. Calls for speculation.

2 A. I think that there are so many
3 different, again, circumstances that could
4 have, you know, where his resignation would
5 have been -- again, as I understand it, at the
6 time the director who resigned had resigned for
7 personal reasons.

8 That's something that I think is
9 fairly innocuous and would not have -- in my
10 opinion, would not have given any rise to any
11 obligation in and of itself to be disclosed.
12 So I think I would have to know all the facts
13 and circumstances prior to making a
14 determination.

15 Q If Mr. Herron resigned in part in
16 protest -- in protest of the OHSL-Provident
17 merger, do you believe that his resignation
18 should have been disclosed?

19 MR. MAUNDRELL: Objection, form,
20 foundation.

21 MR. BURKE: Objection. Assumes
22 facts not in evidence.

23 A. Can you tell me when he resigned?

24 Q He resigned July 27th, 1999,
25 effective July 30th, 1999.

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1 A. Yes.

2 Q And that's because of the meeting
3 taking place when he was no longer on the
4 Board?

5 MR. MAUNDRELL: Objection.

6 A. No. It's because there -- again,
7 as I said, there are a number of circumstances
8 that I would want to take into account in
9 determining whether or not that was appropriate
10 for disclosure. If I were counsel to OHSL,
11 which I was not, of course, I was working for
12 Provident, but as a -- being familiar with the
13 process that had occurred, which was that the
14 summer had been spent by the OHSL shareholders
15 with their investment bankers looking for
16 alternatives for the sale of the company, you
17 know, a director could have resigned because he
18 didn't want to sell the company at all, because
19 he had personal reasons for resigning.

20 There could be a plethora of
21 reasons for why he might have resigned prior to
22 this transaction even coming about. The fact
23 that someone resigned in July when this
24 agreement wasn't negotiated until August would
25 have been of no concern to me.

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1 MR. MAUNDRELL: Same objection.

2 A. Then I would have considered it
3 totally irrelevant.

4 Q Totally irrelevant?

5 A. Totally irrelevant. Because the
6 meeting required to approve the transaction
7 from the Board of Directors' point of view did
8 not occur until after his resignation. And the
9 fact that he was no longer on the Board was --
10 would be in my view totally irrelevant.

11 Q Even if he resigned --

12 A. As a matter of corporate law.

13 Q Even if he resigned in part in
14 protest?

15 MR. BURKE: Objection.

16 MR. MAUNDRELL: Objection. Asked
17 and answered, argumentative.

18 A. Answer, yes.

19 Q Okay. Does the timing of his
20 resignation factor into your decision that it
21 would be totally irrelevant?

22 MR. BURKE: Objection. Asked and
23 answered.

24 MR. GILLIGAN: I think he just
25 said that it did. He just answered it, Mike.

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1 Q Wasn't the --

2 A. Would have been irrelevant to me.

3 MR. GILLIGAN: Based upon what you
4 know?

5 A. Based upon what I know

6 Q Wasn't the agreement negotiated
7 also in July?

8 MR. BURKE: Objection. Calls for
9 speculation.

10 A. The process of negotiating the
11 agreement was initiated in July, but it was not
12 concluded until, until August. So it was an
13 ongoing process that, again, you know, the fact
14 that someone dropped out during the process
15 would have been of very little concern to me.

16 Q Would it concern you if Mr. Herron
17 had voted as a director against continued
18 negotiations with Provident?

19 MR. MAUNDRELL: Objection.

20 MR. BURKE: Objection. Asked and
21 answered.

22 A. At what point in time?

23 Q July 22nd, 1999, or thereabouts.

24 MR. MAUNDRELL: Objection.

25 MR. GILLIGAN: You're saying voted

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1 against it at a Board meeting?
 2 MR. BRAUTIGAM: Yes.
 3 MR. GILLIGAN: Are you
 4 representing -- well, could you finish the --
 5 if you're going to ask him to assume something,
 6 would you give him the actual assumption? In
 7 other words, the date, whether it was a Board
 8 meeting or not, so that it's a fair question.
 9 MR. BRAUTIGAM: Well, I think --
 10 MR. GILLIGAN: You're asking --
 11 MR. BRAUTIGAM: I think it was a
 12 fair question, Lou, but I'm happy to try to
 13 accommodate you.
 14 MR. GILLIGAN: Okay, thank you.
 15 BY MR. BRAUTIGAM:
 16 Q. Mr. Matthews, let me represent to
 17 you that Mr. Herron voted as an OHSL director
 18 against continued negotiations with Provident
 19 Bank on or about July 22nd, 1999. Would that
 20 concern --
 21 MR. GILLIGAN: At an Oak Hills
 22 Saving & Loan Board meeting?
 23 Q. At an OHSL Board meeting.
 24 MR. BURKE: Objection.
 25 MR. MAUNDRELL: Now, what's your

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1 your hypothetical?
 2 MR. MESH: Just stick with the
 3 question.
 4 MR. BRAUTIGAM: The question is
 5 fine.
 6 MR. MAUNDRELL: Then I object,
 7 contains facts not in evidence and it
 8 misrepresents facts that should be in evidence
 9 as part of the question.
 10 A. Yes, as you phrase the question
 11 I'm going to have to say no, not necessarily,
 12 because it would not necessarily have concerned
 13 me. And, in fact, it didn't concern me at the
 14 time, because again, I was told that he had
 15 resigned for personal reasons.
 16 And I had no knowledge of the
 17 Board meetings, I wasn't there. I was never
 18 present at Board meetings. And whether he
 19 voiced opposition to Provident's -- this
 20 transaction is totally something outside of my
 21 knowledge.
 22 Q. Do you think it would have been a
 23 good idea to review the Board minutes of OHSL?
 24 MR. BURKE: Objection.
 25 MR. MAUNDRELL: Objection.

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1 question?
 2 Q. Did you know that?
 3 MR. BURKE: Objection. Calls for
 4 speculation.
 5 MR. MAUNDRELL: Objection.
 6 MR. GILLIGAN: Factually he wants
 7 to know
 8 A. I do not recall that, no.
 9 Q. Would that have concerned you if
 10 you had known that?
 11 MR. MAUNDRELL: Objection.
 12 MR. BURKE: Objection. Asked and
 13 answered.
 14 A. No, not necessarily.
 15 Q. In the context of his voting
 16 against continued negotiations with Provident
 17 on July 22nd, 1999 and his resignation five
 18 days later, effective three days after that,
 19 would this mix of information have concerned
 20 you?
 21 MR. MAUNDRELL: The resignation
 22 being for personal reasons?
 23 MR. BURKE: Objection. Asked and
 24 answered.
 25 MR. MAUNDRELL: Is that part of

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1 MR. GILLIGAN: Wait a minute. He
 2 can't answer that in that form, Mike. Listen
 3 to the question.
 4 A. Well, at what time, Mike?
 5 MR. GILLIGAN: Wait a minute,
 6 you're talking about him? You were asking him
 7 to put himself in the shoes of an OHSL lawyer
 8 at one point in time?
 9 MR. BRAUTIGAM: No, absolutely --
 10 MR. GILLIGAN: Are you asking him
 11 whether it was important for Tim himself to
 12 have looked at it at the time? That's what I
 13 want to know.
 14 MR. BRAUTIGAM: Okay
 15 MR. GILLIGAN: Okay.
 16 MR. BRAUTIGAM: Mr. Matthews, as
 17 the --
 18 MR. GILLIGAN: Rephrase, please.
 19 BY MR. BRAUTIGAM:
 20 Q. Given our discussion so far this
 21 morning, as the lead outside counsel for
 22 Provident Bank in this transaction, do you now
 23 believe that it would have been a good idea to
 24 have someone at KMK review the OHSL corporate
 25 Board minutes?

25 (Pages 94 to 97)

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1 MR. BURKE: Objection.
 2 A. At what point in time?
 3 Q. Summer of 1999.
 4 MR. MAUNDRELL: Objection.
 5 A. Well, that's not a point in time.
 6 MR. MAUNDRELL: Objection. Form,
 7 foundation and relevancy.
 8 Q. Well, if you can't answer the
 9 question, you can't answer the question.
 10 MR. GILLIGAN: Okay. Let's go to
 11 the next question.
 12 Q. Do you believe that in light of
 13 our discussion here this morning, that it would
 14 have been a good idea to have someone at KMK
 15 review the corporate Board minutes of OHSL at
 16 any point between July of 1999 and October
 17 25th, 1999?
 18 MR. GILLIGAN: I'll instruct the
 19 witness not to answer. That's impossible to
 20 answer. That's just not a fair question with
 21 that preamble, "in light of our discussion here
 22 this morning."
 23 MR. BURKE: What does that mean?
 24 MR. GILLIGAN: He can't -- that's
 25 just a totally unfair question. I instruct you

1 that the necessary approval had been obtained.
 2 And further, we knew that the officers -- some
 3 of the officers of OHSL had certified to their
 4 counsel that the requisite approvals had been
 5 obtained. So we had basically three bases for
 6 knowing that the proper approval of the Board
 7 of Directors had been obtained. And there
 8 wasn't any need to go read the minutes.
 9 Q. You testified that it was your
 10 belief that all of the officers of OHSL were in
 11 favor of and, indeed, enthusiastic about the
 12 merger. Is that your understanding?
 13 MR. MAUNDRELL: Objection. Asked
 14 and answered.
 15 MR. GILLIGAN: You said officers,
 16 are you talking about directors?
 17 MR. BRAUTIGAM: I said officers.
 18 MR. BURKE: Objection. Assumes
 19 facts not in evidence. Misstates prior
 20 testimony.
 21 THE WITNESS: That does misstate
 22 prior testimony, because I --
 23 MR. GILLIGAN: Don't answer the
 24 question.
 25 MR. BRAUTIGAM: I didn't mean to

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Page 101

1 not to answer that, Tim. And I've been trying
 2 to tell you why, Mike, so that you can rephrase
 3 if you'd like.
 4 Q. Do you think it would have been a
 5 good idea to have someone at KMK review OHSL's
 6 corporate Board minutes before the merger
 7 closed?
 8 MR. BURKE: Objection. Asked and
 9 answered.
 10 MR. MAUNDRELL: ~~And~~ objection to
 11 form, foundation.
 12 MR. GILLIGAN: If you feel that
 13 you've already answered it, just say I've
 14 already answered it. If you don't, go ahead
 15 and try to answer it if you can without
 16 speculating.
 17 A. No.
 18 Q. Why not?
 19 A. Because OHSL had represented to us
 20 in the definitive merger agreement that the
 21 requisite approval had been obtained by the
 22 Board of Directors already as of the date of
 23 the signing of the agreement.
 24 And further, we had received a
 25 legal opinion from their counsel to the effect

1 misstate prior testimony.
 2 MR. MAUNDRELL: Well, you did.
 3 MR. GILLIGAN: All right. Well,
 4 let's move on.
 5 BY MR. BRAUTIGAM.
 6 Q. Did you believe that all of OHSL's
 7 officers were in favor of the merger with
 8 Provident and enthusiastic about the merger
 9 with Provident?
 10 A. I had no knowledge of what all of
 11 the officers of OHSL might have believed.
 12 Q. Well, there were only four. Isn't
 13 that correct?
 14 MR. BURKE: Objection, foundation.
 15 A. I would not have known that.
 16 Q. Did someone tell you that the
 17 officers of OHSL were in favor of and
 18 enthusiastic about the merger with Provident?
 19 MR. MAUNDRELL: Objection. Asked
 20 and answered.
 21 A. Yes.
 22 Q. And that was which person?
 23 A. Well, I think that -- that was my
 24 understanding through their counsel, as well as
 25 through their investment bankers.

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1 Q. Okay. That's fine.

2 MR. MAUNDRELL: And that's
3 consistent with his earlier testimony.

4 Q. Mr. Matthews, do you believe that
5 the proxy materials and registration statement
6 should not be misleading?

7 MR. BURKE: Objection.

8 MR. MAUNDRELL: Objection.

9 MR. GILLIGAN: This is a general
10 statement?

11 MR. BRAUTIGAM: Yes.

12 MR. GILLIGAN: It's just a
13 general, it's like do you think it's
14 appropriate to beat your wife. I mean, gees.
15 Go ahead and answer it if you can.

16 A. That's the feeling I have about
17 that question. Yes, as a general matter they
18 should not be misleading.

19 BY MR. BRAUTIGAM:

20 Q. Do you think that Defendant's
21 Exhibit 1 is materially misleading in anyway,
22 given our discussion here today so far?

23 MR. BURKE: Objection.

24 MR. GILLIGAN: I instruct you not
25 to answer.

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1 of the proxy materials, which is September
2 24th, 1999, correct?

3 MR. MAUNDRELL: Objection.

4 MR. BURKE: Objection. Assumes
5 facts not in evidence. Calls for speculation.

6 MR. MAUNDRELL: Calls for
7 speculation.

8 MR. BURKE: Foundation.

9 MR. GILLIGAN: You're asking him
10 what it means to you, what it means to him or
11 what --

12 MR. BRAUTIGAM: Lou, I really
13 think that the question is clear.

14 MR. GILLIGAN: All right. Will
15 you read --

16 MR. BRAUTIGAM: Fine.

17 MR. GILLIGAN: Let me hear the
18 question again.

19 (Record read by Reporter.)

20 MR. BURKE: Objection,
21 speculation, foundation.

22 A. I don't know, because I don't
23 remember how many members of the Board there
24 were and I don't know to what date this
25 specifically refers or what meeting this might

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1 MR. BRAUTIGAM: What's the basis
2 for that instruction?

3 MR. GILLIGAN: Based upon our
4 discussion so far today? These are not --

5 MR. BRAUTIGAM: I disagree with
6 you. I think it's an improper instruction.

7 MR. GILLIGAN: That's okay.

8 BY MR. BRAUTIGAM:

9 Q. Okay. Let's take a look at the
10 first page of Defendant's Exhibit 1, the
11 sentence I'm particularly interested in. Your
12 Board of Directors unanimously approved the
13 acquisition. Do you see that?

14 MR. BURKE: That's not what it
15 says. Please read the whole sentence.

16 MR. BRAUTIGAM: Jim, when you're
17 asking the questions, you can read whatever
18 you'd like.

19 BY MR. BRAUTIGAM:

20 Q. Do you see that sentence, sir?

21 A. I do.

22 MR. BURKE: That's not the
23 sentence.

24 Q. Okay. And that Board refers to
25 the seven then existing members as of the date

Page 105

1 be referring to.

2 BY MR. BRAUTIGAM:

3 Q. Okay. Can I direct your attention
4 to page 18 of the document?

5 MR. GILLIGAN: There's more than
6 one page 18. Make sure we've got the right
7 one. Which document is this?

8 A. Eighteen of the proxy statement
9 and prospectus?

10 Q. Yes.

11 A. Or the merger agreement?

12 Q. Page 18. I think we're doing
13 fine.

14 A. Okay.

15 Q. Do you see the section The
16 Acquisition?

17 A. The Acquisition, yes.

18 Q. And this is talking about OHSL,
19 correct?

20 A. Yes.

21 Q. And this was written by OHSL,
22 correct?

23 MR. MAUNDRELL: Objection. Form,
24 foundation. Calls for speculation.

25 MR. GILLIGAN: Are you talking

27 (Pages 102 to 105)

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1 about that whole section, because there are
 2 several different pages?
 3 MR. BRAUTIGAM: Yes.
 4 MR. GILLIGAN: Was that whole
 5 section written by --
 6 MR. BRAUTIGAM: OHSL.
 7 MR. MAUNDRELL: Same objection.
 8 There's no foundation.
 9 THE WITNESS: Should I read the
 10 entire section verbatim to answer your
 11 question, Mike?
 12 MR. BRAUTIGAM: No, if you know if
 13 they wrote that section of the document, you
 14 can tell me. If you don't know, that's fine.
 15 MR. BURKE: Does OHSL include
 16 OHSL's counsel or just OHSL?
 17 MR. BRAUTIGAM: Okay. Let me ask
 18 a different question.
 19 MR. BURKE: Okay.
 20 BY MR. BRAUTIGAM:
 21 Q. Mr. Matthews, do you know who
 22 wrote the section The Acquisition?
 23 A. When you say who wrote it, what do
 24 you mean by that? Do you mean the content?
 25 Q. Yes.

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1 A. Would have been supplied by OHSL
 2 or through its counsel.
 3 Q. Okay. KMK did not write that,
 4 correct?
 5 MR. MAUNDRELL: Objection.
 6 A. That is correct.
 7 Q. Okay. Let's look at some distinct
 8 things here. The first paragraph, the first
 9 line refers to the Board of Directors of OHSL.
 10 Do you see that?
 11 A. No, I don't see that. Under The
 12 Acquisition?
 13 Q. Actually Background of the
 14 Acquisition.
 15 A. Oh, the next section?
 16 Q. Yes. Subsection, I think.
 17 A. Okay.
 18 Q. Okay. And is it fair to say that
 19 the Board of Directors refers to the then seven
 20 Board members of OHSL on August 2nd, 1999?
 21 MR. BURKE: Objection.
 22 MR. MAUNDRELL: Objection.
 23 Q. We had eight, Mr. Herron resigned
 24 effective July 30th, 1999. Are you with me?
 25 MR. BURKE: Objection, form.

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1 MR. MAUNDRELL: Objection. Form,
 2 foundation. Calls for speculation.
 3 MR. GILLIGAN: Can you repeat the
 4 question? I think you changed it at the end.
 5 I'm confused.
 6 MR. MAUNDRELL: You did.
 7 BY MR. BRAUTIGAM:
 8 Q. Do you want me to rephrase it?
 9 A. Are you asking me whether I know
 10 it was seven versus eight directors?
 11 Q. No. I'm asking -- I'm
 12 representing to you that on August 2nd, 1999,
 13 OHSL had seven directors. Are you with me?
 14 A. Yes.
 15 MR. GILLIGAN: Are you asking him
 16 if he knew that at that time as well?
 17 MR. BRAUTIGAM: No.
 18 MR. GILLIGAN: Okay, you're
 19 just -- okay. Go ahead.
 20 BY MR. BRAUTIGAM:
 21 Q. So my question is, when the Board
 22 of Directors of OHSL is used, that refers to
 23 the then existing directors as of August 2nd,
 24 1999, correct?
 25 MR. BURKE: Objection.

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1 MR. MAUNDRELL: Objection. Form,
 2 foundation, speculation.
 3 MR. BURKE: Foundation.
 4 A. That would be my impression.
 5 Q. Okay. Now, if you look at the
 6 second paragraph on the next page, The Board
 7 continued to allocate its time at monthly
 8 meetings to review its options. And at a
 9 meeting held in February 1999, the Board
 10 appointed an ad hoc committee of the Board of
 11 Directors consisting of three directors to
 12 research and evaluate any benefits to the sale
 13 of OHSL. Do you see that?
 14 A. Yes, I do.
 15 Q. There's a reference to the Board
 16 of Directors in that paragraph, correct?
 17 A. Yes.
 18 Q. And the time reference is February
 19 of 1999, correct?
 20 A. Right.
 21 Q. Did the Board's composition change
 22 between February 1999 and August 2nd, 1999?
 23 MR. BURKE: Objection. Calls for
 24 speculation. This witness has no firsthand
 25 knowledge. You may answer.

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1 A. I don't know in what ways the
2 Board composition may have changed during that
3 intervening period of time, nor would I have
4 viewed it as relevant.

5 Q. Okay.

6 A. Because we're speaking here as, as
7 an entity collectively, the Board.

8 Q. Okay.

9 A. It's like referring to the White
10 House.

11 Q. Okay. Let's take a look --

12 A. Okay.

13 Q. -- at the reference to April 1999.

14 A. Okay.

15 Q. It says, The OHSL Board of
16 Directors in April 1999. Do you see that?

17 A. No.

18 MR. GILLIGAN: Where is that?

19 A. Where is that? Oh, the next
20 paragraph?

21 Q. Yes.

22 MR. GILLIGAN: Where, Tim?

23 MR. MAUNDRELL: So your question
24 is what, does he see it?

25 Q. Does he see it.

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1 Is that true? Did you read the section The
2 Acquisition?

3 A. At what time?

4 Q. At any time.

5 A. During the time of the
6 transaction?

7 Q. At any time, did you read the
8 section The Acquisition?

9 A. Yes.

10 Q. Thank you. Now, let me direct
11 your attention to the entry July 22nd, 1999.
12 It's on page 20, and it talks about the Board.
13 Do you see that?

14 MR. GILLIGAN: What paragraph?
15 Second from the bottom?

16 Q. Penultimate.

17 MR. GILLIGAN: Is there a
18 question? Do you want him to read that
19 paragraph?

20 Q. No. Do you see that paragraph?

21 MR. GILLIGAN: He sees it. Do you
22 see it?

23 A. I do.

24 Q. And do you believe that that
25 paragraph refers to the then existing Board of

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1 A. I do see it.

2 Q. Okay. And that refers to the
3 entire Board that existed as of April of 1999;
4 is that correct?

5 MR. BURKE: Objection. Calls for
6 speculation. You're asking him to interpret a
7 document he never read or --

8 MR. MAUNDRELL: Objection.

9 MR. GILLIGAN: What I thought you
10 had been asking here was the obvious, and that
11 is where it says Board of Directors. The Board
12 of Directors is the Board. It's just the Board
13 of Directors.

14 A. However it may be constituted from
15 time to time.

16 MR. GILLIGAN: Right. That's what
17 he's been answering and I thought that's what
18 you were asking. Why are we -- were you in
19 some other context?

20 MR. BRAUTIGAM: I'm doing fine,
21 really.

22 MR. MAUNDRELL: You may be, but --
23 BY MR. BRAUTIGAM:

24 Q. Mr. Matthews, Mr. Burke made an
25 objection that you did not read this section.

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1 OHSL directors in whatever form?

2 MR. BURKE: Objection.

3 MR. MAUNDRELL: Objection.

4 MR. GILLIGAN: Why don't you read
5 the whole paragraph before you answer the
6 question?

7 MR. MAUNDRELL: Form and
8 foundation.

9 Q. Why don't you read the next
10 paragraph to yourself as well, because that
11 will be my follow-up question.

12 MR. GILLIGAN: Okay.

13 A. Yes.

14 Q. Okay. Have you read both
15 paragraphs?

16 A. Yes.

17 Q. Okay. Let me direct your
18 attention to the bottom paragraph. From July
19 22nd, 1999 to August 2nd, 1999, McDonald, the
20 OHSL Board, and OHSL's legal counsel engaged in
21 negotiations with Provident Financial related
22 to a definitive agreement. Do you see that?

23 A. Yes.

24 Q. Do you believe that that use of
25 the OHSL Board is misleading in this context?

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1 MR. MAUNDRELL: Objection.
 2 MR. BURKE: Objection.
 3 MR. MAUNDRELL: Form, foundation,
 4 relevancy. Calls for speculation.

5 A. No.

6 Q. Why not?

7 MR. MAUNDRELL: Objection.

8 A. I, I think it's clear that, that
 9 the Board of Directors as a whole, regardless
 10 of changes in composition that may have
 11 occurred during that intervening period of
 12 time, did, in fact, in various forms engage in
 13 negotiations relating to a definitive
 14 agreement.

15 Some Board members may have been
 16 more active than others. Some officers may
 17 have been more active than others. Counsel was
 18 involved. I think it's an absolutely true
 19 statement, so I did not believe it was
 20 misleading in any way.

21 Q. Okay. Let's go back to the first
 22 page of the document, please.

23 A. Okay.

24 Q. Is this document -- well, who was
 25 responsible for this document, Defendant's

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1 MR. BRAUTIGAM: We don't need
 2 speaking objections.

3 MR. MAUNDRELL: That's what he
 4 asked. He just asked.

5 MR. BRAUTIGAM: I think we're
 6 doing fine. I can say who's responsible for
 7 the document, we can go page by page, use the
 8 index. I think we're doing fine. But I
 9 respectfully request that you keep the speaking
 10 objections to a minimum.

11 MR. GILLIGAN: I asked you a
 12 question, I didn't make an objection. I simply
 13 asked you to be fair and say, you know, he's --
 14 look, whether you're doing fine or not really
 15 is irrelevant.

16 Let me just explain to you the
 17 problem, which is he's already talked about,
 18 for example, this first page ad nauseam and
 19 indicated to you he had nothing to do with the
 20 preparation of that, never saw it before, et
 21 cetera. So then when you ask him about the
 22 whole document, you're asking him a repetitious
 23 question, which he's already answered that the
 24 answer would be no. Do you see what I'm --
 25 what I'm trying to say?

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1 Exhibit 1?

2 MR. BURKE: Objection to
 3 foundation.

4 MR. MAUNDRELL: Objection. Asked
 5 and answered.

6 MR. GILLIGAN: He's already
 7 answered that. Haven't you answered that, Tim?

8 MR. MAUNDRELL: Yes.

9 A. Who -- I'm not sure that that
 10 question has been posed in that exact form.

11 Q. Thank you. I don't think so,
 12 either.

13 MR. MAUNDRELL: Well, it doesn't
 14 have to be formed in the precise form to have
 15 been asked and answered previously, Mr.
 16 Brautigam. I've got news for you.

17 A. What do you mean by, responsible
 18 for the document?

19 Q. Okay. Who was responsible for
 20 finalizing Defendant's Exhibit 1?

21 MR. BURKE: Objection, foundation.

22 MR. GILLIGAN: When you say -- he
 23 means -- you mean every page starting with this
 24 page that you already testified about to the
 25 last? That's what you're asking, Mike?

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1 MR. BRAUTIGAM: Actually, I don't.

2 MR. GILLIGAN: It's a document
 3 made up of many parts, some of which he was
 4 involved in, some of which he was not. He's
 5 already testified to that.

6 MR. BURKE: Exactly.

7 MR. BRAUTIGAM: Great. We're
 8 going to get there, okay? If I could just have
 9 a dialogue with the witness, I think we'll be
 10 fine. In other words --

11 MR. GILLIGAN: Go ahead and answer
 12 the question.

13 MR. BRAUTIGAM: Thank you.

14 THE WITNESS: Well, no --

15 MR. GILLIGAN: Don't answer the
 16 question unless you get another -- let's just
 17 get another question. I'll instruct you not to
 18 answer. And with that, I ask you to rephrase
 19 it.

20 MR. BRAUTIGAM: Fine. I'm happy
 21 to accommodate you.

22 MR. GILLIGAN: And I'm trying to
 23 tell you why so that we can move ahead.

24 MR. BRAUTIGAM: Well, I didn't
 25 understand you, but I'm happy to accommodate

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1 you and rephrase the question.

2 BY MR. BRAUTIGAM:

3 Q. Mr. Matthews, was there a person
4 or entity with overall responsibility for the
5 finalization of Defendant's Exhibit 1?

6 MR. BURKE: Objection.
7 Speculation, foundation.

8 A. I would say not, because, I mean,
9 the way you phrased the question, was there a
10 single person or entity responsible for
11 finalizing this document? I would say no.

12 Q. Okay. Was there a person or
13 entity responsible for finalizing certain
14 sections of the document?

15 A. Yes.

16 Q. Okay. With respect to the
17 sections provided by Provident or KMK, were you
18 that person?

19 A. No.

20 Q. Who was that person?

21 A. Mark Weiss would have been
22 primary -- and again, let me back up. Which
23 part of the document are you referring to,
24 because we would have had different
25 responsibilities for different parts.

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1 I was primarily responsible, for
2 example, for The Merger Agreement portion of
3 this document. Mark was not involved in the
4 negotiation of the definitive agreement. With
5 regard to the proxy statement and prospectus,
6 that was a joint effort of OHSL's counsel and
7 KMK, and I did not take a primary lead in that
8 part of the process. That's -- that would have
9 been -- that would have been Mark Weiss for
10 KMK.

11 Q. And who was Mark Weiss' opposite
12 number at the Dinsmore firm?

13 MR. BURKE: Objection to form.

14 A. I -- I don't recall. I don't
15 recall.

16 Q. So if I understand your testimony
17 correctly, the portions of Defendant's Exhibit
18 1 that constitute the proxy statement are the
19 joint responsibility of Provident, KMK, OHSL,
20 and Dinsmore; is that correct?

21 MR. BURKE: Objection. Misstates
22 prior testimony.

23 MR. GILLIGAN: Objection.

24 A. That's not what I said.

25 MR. GILLIGAN: That's the answer.

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1 Q. How is my recitation incorrect?

2 A. Well, first of all --

3 MR. GILLIGAN: You restated his
4 answer. I told you in the beginning, I only
5 let him answer questions -- if you don't
6 understand his answer, then ask him about what
7 part you don't understand. But he just
8 answered your question, so it's in black and
9 white after she types it up, so that's it.

10 If you have to rephrase his
11 answer, you're therefore automatically asking a
12 repetitious question. He gave you an answer.
13 If you don't understand part of it, I don't
14 have a problem with you asking him about what
15 you don't understand about it, but I do object
16 and I will not let him answer questions that
17 restate testimony already given.

18 MR. BRAUTIGAM: Let's go off the
19 record briefly.

20 MR. GILLIGAN: Fine.

21 (Brief recess.)

22 BY MR. BRAUTIGAM:

23 Q. Mr. Matthews, are you familiar
24 with Section 11 of the Securities Act of 1933?

25 A. No. I'm familiar that there is

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1 one, but I couldn't tell you what it says right
2 now

3 Q. Do you have a working
4 understanding of the Securities Act of 1933,
5 specifically Section 11?

6 A. No.

7 MR. BURKE: Objection. Asked and
8 answered.

9 Q. Okay. Could I direct your
10 attention to the table of contents of
11 Defendant's Exhibit 1? Who wrote Questions and
12 Answers About the Acquisition?

13 MR. BURKE: Objection, foundation.

14 A. Well, the last time you asked me a
15 question about something that was written, I
16 explained that that term can be used in a
17 couple different contexts. Are you talking
18 about who the scrivener of the information was,
19 or who supplied the content for that particular
20 section?

21 Q. Well, let's take both questions.

22 A. Okay.

23 Q. With respect to the questions and
24 answers, who was the scrivener for the words
25 that appear on those pages?

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1 MR. BURKE: Objection, foundation.
 2 Calls for speculation.
 3 A. I do not know.
 4 Q. Do you believe that it was someone
 5 at KMK?
 6 MR. MAUNDRELL: Objection.
 7 MR. BURKE: Objection. Calls for
 8 speculation.
 9 A. I don't know.
 10 Q. You have no idea where it --
 11 MR. BURKE: Objection.
 12 Q. Who was the scrivener?
 13 MR. BURKE: Asked and answered.
 14 MR. MAUNDRELL: Objection,
 15 repetitious.
 16 A. I don't know.
 17 Q. Okay. Where did the information
 18 come from with respect to the content of the Q
 19 and A?
 20 A. Don't know.
 21 Q. Did some of that information come
 22 from Provident through KMK?
 23 MR. MAUNDRELL: Objection.
 24 MR. BURKE: Objection. Calls for
 25 speculation.

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1 A. I don't recall.
 2 Q. More than a thousand?
 3 A. No.
 4 MR. BURKE: A thousand?
 5 Q. More than 500?
 6 A. No.
 7 Q. More than 250?
 8 A. No.
 9 Q. In the area of 200 or so?
 10 A. Less than 250, I feel.
 11 Q. Okay. Who at KMK was responsible
 12 for working on this summary, these pages?
 13 MR. BURKE: Objection, foundation.
 14 A. Mark Weiss.
 15 Q. Who at Dunsmore was responsible
 16 for working on this summary?
 17 MR. MAUNDRELL: Objection.
 18 A. Cliff Roe.
 19 Q. Do you know whose computer system
 20 this summary came off?
 21 A. No.
 22 Q. The entire document at some point
 23 went to a financial printer, is that correct?
 24 A. Yes. I seem to recall that it
 25 did.

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1 A. I don't know.
 2 Q. Let's take the next section,
 3 Summary. Let's look at pages three to five.
 4 Have you read these pages before today?
 5 MR. MAUNDRELL: Objection. Asked
 6 and answered at least twice before.
 7 A. Yes.
 8 Q. Did you read these pages as the
 9 proxy materials and registration statement were
 10 being prepared?
 11 A. I'm not exactly -- I've probably
 12 -- I think I recall reading this as it was
 13 close to the end of the preparation process.
 14 I, I was not involved in the process of
 15 preparing it.
 16 Q. And what was the purpose for your
 17 reading that?
 18 A. To review it generally for form
 19 and to determine if there was any information
 20 of which I had knowledge that might need to be
 21 corrected.
 22 Q. Was there any?
 23 A. No.
 24 Q. How many hours did you bill in the
 25 Provident-OHSL merger?

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1 Q. Okay. Perhaps that was inartful,
 2 but the information that became the final
 3 document went to a financial printer, correct?
 4 A. Yes.
 5 Q. And how did that information get
 6 from wherever it was prior to the financial
 7 printer?
 8 A. I don't know.
 9 Q. Did KMK send someone to the
 10 financial printer to ensure the accuracy of the
 11 document?
 12 MR. BURKE: Objection.
 13 MR. MAUNDRELL: Objection.
 14 MR. BURKE: Misleading question.
 15 A. I don't know. I did not go.
 16 Q. In 1999, was that a common
 17 practice?
 18 MR. BURKE: Objection. Form.
 19 MR. GILLIGAN: I don't think you
 20 can answer the question as posed. It's too
 21 open-ended.
 22 A. Mike, you know, I'll answer it in
 23 this way: Fifteen years ago, in the eighties
 24 that would have been a common practice. In the
 25 mid to late nineties that became much less of a

32 (Pages 122 to 125)

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1 common practice and today it would not be a
 2 common practice.
 3 Q. Because of the electronic
 4 transmittal of data, correct?
 5 A. Right.
 6 Q. Okay. Can I direct your attention
 7 to the second column on page four? Do you see
 8 the \$36 figure there? Third bullet point in
 9 the right-hand column?
 10 A. Yes.
 11 Q. Is that figure correct?
 12 MR. GILLIGAN: Is it correct in
 13 that context?
 14 MR. BURKE: What page are we on?
 15 A. Is the figure correct? I don't
 16 know what you mean by that question.
 17 Q. Is the number \$36 correct?
 18 A. It's correctly printed, it's \$36.
 19 Q. Should it be \$36? That's my
 20 question.
 21 MR. BURKE: Objection.
 22 MR. GILLIGAN: I'll instruct you
 23 not to answer.
 24 Q. Page four.
 25 MR. GILLIGAN: Come on, Mike,

1 A. Of the prospectus?
 2 Q. Yes.
 3 A. Okay.
 4 Q. Where did this information come
 5 from?
 6 A. Provident Financial Group.
 7 Q. And was KMK responsible for
 8 inserting this information into the document?
 9 MR. BURKE: Objection, foundation.
 10 A. Well, the ultimate responsibility
 11 is with Provident, but we did -- we did insert
 12 this information in the document.
 13 Q. What did you mean in your previous
 14 answer when you said the ultimate
 15 responsibility is with Provident?
 16 A. Well, Provident is responsible for
 17 its financial information and the accuracy of
 18 the financial information. And we would have
 19 not undertaken any due diligence or
 20 verification as to the, the numbers themselves.
 21 So Provident was responsible for the numbers,
 22 but --
 23 Q. Were these numbers correct?
 24 MR. BURKE: Objection,
 25 speculation.

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1 you've got to make the question in a context
 2 that's understandable.
 3 A. I don't know what you mean. I --
 4 MR. GILLIGAN: Tim --
 5 A. I see 36 on the page here.
 6 Q. Okay. Is 36 the right number?
 7 It's a very simple question.
 8 A. Do you want to relate that to
 9 something? Right in connection with -- do you
 10 mean did it correctly reflect the merger
 11 agreement?
 12 Q. Yes. I'll adopt your question.
 13 A. I don't recall. We can easily
 14 check by looking at The Merger Agreement.
 15 Q. Does the number 36.60 ring a bell?
 16 MR. GILLIGAN: Again --
 17 MR. BURKE: Does the number ring a
 18 bell?
 19 A. The Merger Agreement --
 20 MR. BURKE: Objection to form.
 21 A. Mike, it appears to me that the
 22 figure should have been \$36.60, instead of \$36
 23 even.
 24 Q. Okay. Can I direct your attention
 25 to pages six and seven of the document?

1 A. I -- I don't know.
 2 Q. Are you familiar with Provident's
 3 March 5th, 2003 restatement?
 4 A. I'm not personally familiar with
 5 it, no.
 6 Q. Did you read about it in the
 7 papers?
 8 A. Yes.
 9 Q. Are you familiar with the term
 10 restatement?
 11 A. Yes.
 12 Q. What do you understand restatement
 13 to mean?
 14 A. Well, a restatement can mean a lot
 15 of things, but in the context, I believe, in
 16 which you're asking this question, a
 17 restatement would be a change in the
 18 presentation of the financial information based
 19 upon a change in accounting practice or
 20 principle.
 21 Q. And does that mean that the
 22 previous financial statements were materially
 23 incorrect?
 24 A. No.
 25 MR. BURKE: Objection. Calls for

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1 speculation.

2 Q. It does not mean that the previous
3 financial statements were materially incorrect?

4 A. That would not be my understanding
5 of it.

6 Q. Okay. Are you disagreeing with me
7 on the word material?

8 MR. BURKE: Objection. He's
9 disagreeing with you.

10 MR. MAUNDRELL: Yes. He doesn't
11 agree with your question.

12 MR. GILLIGAN: He just answered it
13 no, so no is no.

14 Q. Okay. What does a restatement
15 mean with respect to materiality of financial
16 statements?

17 A. I couldn't answer that question,
18 because I'm not an accounting expert.

19 Q. Okay. Can I direct your attention
20 to page 12 of the document?

21 A. Okay.

22 Q. Did KMK write this page?

23 MR. BURKE: Objection, foundation.

24 A. I do not know.

25 Q. Let's look at page 13 of the

1 Q. Did you read the section on Risk
2 Factors in the course of your work on the
3 OHSL-Provident merger?

4 MR. MAUNDRELL: Objection. Asked
5 and answered.

6 A. I believe I've answered that
7 question, yes. I read the entire prospectus.

8 Q. Okay. Let me direct your
9 attention to page 16, The Special Meeting. Was
10 this the responsibility of OHSL?

11 MR. MAUNDRELL: Objection.

12 MR. BURKE: Was what the
13 responsibility, The Special Meeting?

14 Q. The section The Special Meeting.
15 It continues up to page 18, I believe.

16 MR. MAUNDRELL: Same objection.

17 A. Yes.

18 Q. Did you ever see this in draft
19 form?

20 A. By "draft form," do you mean in
21 a -- in a form prior to it being sent to the
22 printer?

23 Q. Yes.

24 A. Yes.

25 Q. Did you have discussions with

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1 document that's entitled Risk Factors. Do you
2 see that?

3 A. Right.

4 Q. And it goes on for three pages.

5 A. Um-hmm, okay.

6 Q. Did KMK write this section?

7 A. I don't know.

8 Q. Are you familiar with the term
9 securitizations?

10 A. Yes.

11 Q. What are securitizations?

12 A. Well, there are a lot of different
13 kinds of securitizations. Do you just want a
14 general definition?

15 Q. Sure.

16 A. A general definition of a
17 securitization is a transaction in which the
18 ownership of some kind of asset is converted
19 into a different form in which securities can
20 be held to represent ownership interest.

21 Q. Are you familiar with whether it
22 is and is not appropriate to have securitized
23 assets off the balance sheet?

24 A. No. I said before I'm not an
25 accounting expert.

1 anyone as to what should or should not be
2 included on these drafts?

3 MR. GILLIGAN: If you're referring
4 to specific drafts, you'd have to put them in
5 front of him, I would think, but go ahead if
6 you can answer it, Tim.

7 A. I don't recall. Well, let me make
8 sure I understand the question. Repeat the
9 question for me, please.

10 (Record read by Reporter.)

11 A. I don't recall.

12 Q. Okay. Can I direct your attention
13 to page 33, The Merger Agreement? Who was
14 responsible for the section, The Merger
15 Agreement?

16 A. This is a section that briefly
17 summarizes The Merger Agreement. And all the
18 parties to The Merger Agreement would have been
19 consulted and had input on this section.

20 Q. Did you have any input into this
21 section?

22 A. Yes.

23 Q. Did you write any of the language
24 that appears in this section?

25 A. No.